

**WSR 06-23-006**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:28 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Language in chapter 180-38 WAC referring to public schools and/or school districts has been removed as the state board has authority for immunization related to private schools with the passage of E2SHB 3098.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-38-080; and amending chapter 180-38 WAC.

Statutory Authority for Adoption: RCW 28A.210.160.

Adopted under notice filed as WSR 06-19-091 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

### Chapter 180-38 WAC

#### **((PUPILS)) PRIVATE SCHOOL PUPIL IMMUNIZATION REQUIREMENT ((AND LIFE THREATENING HEALTH CONDITION))**

**AMENDATORY SECTION** (Amending WSR 05-23-044, filed 11/9/05, effective 12/10/05)

**WAC 180-38-005 Purpose and authority.** (1) The purpose of this chapter is to establish the procedural and substantive due process requirements governing the exclusion of students from ((public and)) private schools for failure to comply with the immunization requirement of the state of Washington ((or, in the case of public schools only, failure to present a medication or treatment order for a life threatening health condition)).

(2) The authority for this chapter is RCW 28A.210.160.

**AMENDATORY SECTION** (Amending WSR 02-24-019, filed 11/26/02, effective 12/27/02)

**WAC 180-38-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(6).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(1).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(2).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for private school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC 246-100-166(5)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the private school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) ((Life threatening condition shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

((9))) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance((

((a))) due to failure to submit a schedule of immunization, or a certificate of exemption((

((b)) In the case of a life threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law)) in accordance with RCW 28A.210.120.

((10))) (7) "School day" shall mean ((the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school)) each day of the school year on which students enrolled in the private school are engaged in educational activity planned by and under the direction of the staff, as directed by the chief administrator and applicable governing board of the private school.

((11))) (8) "Parent" shall mean parent, legal guardian, or other adult *in loco parentis*.

**AMENDATORY SECTION** (Amending WSR 02-24-019, filed 11/26/02, effective 12/27/02)

**WAC 180-38-045 Private school attendance conditioned upon presentation of proofs.** (1) The initial attendance of every student at every ((public and)) private school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each ((public or)) private school shall prohibit the further presence at school of each

student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210. 080(1). Such exclusion shall be preceded by written notice as set forth in WAC 180-38-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent, guardian or other adult *in loco parentis*.

((3) The initial attendance of every student at every public school who has a life threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 180-38-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).))

#### AMENDATORY SECTION (Amending WSR 02-24-019, filed 11/26/02, effective 12/27/02)

**WAC 180-38-050 Written notice prior to exclusions from private school.** (1) Private schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 180-38-045.

(2) ((The written notice for public school students shall:

(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.

(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.

(e) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.

(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.

(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.

((3)) The written notice for private school students shall:

(a) Inform the appropriate party of the applicable laws and provide copies of such law and implementing rules.

(b) Provide information regarding immunization services that are available from or through the local health department or other public agencies.

(c) Order the exclusion of the student from school and state that such order is effective upon receipt of the notice.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-38-080

Prehearing and hearing process.

#### **WSR 06-23-007**

#### **PERMANENT RULES**

#### **STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:31 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Language in WAC 180-08-002 was amended to reflect the new duties and organization of the state board of education. WAC 180-08-006 had technical amendments to correct language.

Citation of Existing Rules Affected by this Order: Amending WAC 180-08-002 and 180-08-006.

Statutory Authority for Adoption: RCW 28A.305.130, 34.05.220, and 42.17.250 through 42.17.348.

Adopted under notice filed as WSR 06-19-087 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

**WAC 180-08-002 General description of organization.** (1) The state board of education is created by law in chapter 28A.305 RCW.

(2) The purpose of the state board of education is to provide advocacy and strategic oversight of public education; implement a standards-based accountability system to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board shall:

(a) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business;

(b) Form committees as necessary to effectively and efficiently conduct the work of the board;

(c) Seek advice from the public and interested parties regarding the work of the board;

(d) For the purposes of statewide accountability:

(i) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems necessary to improve student learning;

(ii) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of certificates;

(iii) Adopt objective, systematic criteria to identify successful schools and school districts and recommend to the superintendent of public instruction schools and districts to be recognized for two types of accomplishments, student achievement and improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:

(A) An increase in the percent of students meeting standards;

(B) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(C) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting standard, or the improvement index.

(iv) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards;

(v) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies after the legislature has authorized a set of intervention strategies. After the legislature has authorized a set of intervention strategies, at the request of the board, the superintendent shall intervene in the school or school district and take corrective actions;

(vi) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(vii) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction for any improvements needed to the system; and

(viii) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board.

(e) Accredit, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve; provide that no private school may be approved that operates a kindergarten program only; provided further that no private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials;

(f) Articulate with the institutions of higher education, work force representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system;

(g) Hire an executive director and an assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020.

(3) The board consists of ((one voting member from each congressional district in the state, elected by the members of school district boards of directors in the congressional district, who serve staggered four year terms; the superintendent of public instruction, who serves as an ex officio member and chief executive officer of the board and votes only to break ties; and one member elected at large by members of the boards of directors of approved private schools, who serves a four year term. A secretary (executive director) is appointed by the board.));

(a) Five members, three from Western Washington and two from Eastern Washington elected by members of school district boards of directors in those respective regions;

- (b) Seven members appointed by the governor;
- (c) The superintendent of public instruction;
- (d) One member elected at large by members of the boards of directors of approved private schools; and
- (e) Two high school students, selected by a process determined by the state board, who are nonvoting members.

((2))) (4) The governor appointed and school director elected members serve staggered terms of office of no more than two consecutive four-year terms.

(5) The board determines its own officers.

(6) General policy powers of the board relate to ((educator preparation and certification requirements, school construction)) the school accountability system, high school graduation requirements, school district approval for basic education funding purposes, waivers from basic education requirements, private school approval and accreditation, ((school)) educational service district boundaries, ((approval)) immunization of private school((s)) students, and ((other matters)) home-based testing.

((3))) (7) The state board ((typically meets six times a year and)) publishes a schedule of its meetings and notices of proposed rule-making actions in the *Washington State Register*. ((The meetings may be scheduled in various locations across the state.)) The secretary (executive director) to the state board of education maintains a complete record of all board proceedings and supporting materials.

**AMENDATORY SECTION** (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

**WAC 180-08-006 Public records officer—Access to public records—Requests for public records—Determination regarding exempt records—Review of denials of public record requests—Protection of public records—**

**Copying—Office hours.** (1) The state board's public records officer shall be the board's secretary (executive director) located in the administrative office of the board located in the Old Capitol Building, 600 South Washington, Olympia, Washington 98504-7206. The secretary (executive director) shall be responsible for implementation of the board's rules and regulations regarding release of public records and generally ensuring compliance by staff with the public records disclosure requirements in chapter 42.17 RCW.

(2) Access to public records in the state board of education shall be provided in compliance with the provisions of RCW 42.17.260.

(3) Requests for public records must comply with the following procedures:

(a) A request shall be made in writing to the secretary (executive director) or designee of the ((board)) director. The request may be brought to the administrative office of the board during customary office hours or may be mailed, delivered by facsimile, or by electronic mail. The request shall include the following information:

- (i) The name of the person requesting the record;
- (ii) The time of day and calendar date on which the request was made;
- (iii) The nature of the request;
- (iv) If the matter requested is referenced within the current index maintained by the secretary (executive director), a

reference to the requested information as it is described in such current index;

(v) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested shall be provided.

(b) In all cases in which a member of the public is making a request, it shall be the obligation of the secretary (executive director), or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

(4)(a) The board reserves the right to determine that a public record requested in accordance with subsection (3) of this section is exempt under the provisions of RCW 42.17.310 and 42.17.315. Such determination may be made in consultation with the secretary (executive director) or an assistant attorney general assigned to the board.

(b) Pursuant to RCW 42.17.260, the board reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy. Provided, however, In each case, the justification for the deletion shall be explained fully in writing.

(c) Response to requests for a public record must be made promptly. Within five business days of receiving a public record request, the ((board)) executive director shall respond by either:

(i) Providing the record;

(ii) Acknowledging that the board has received the request and providing a reasonable estimate of the time ((the board will require)) required to respond to the request; or

(iii) Denying the public record request.

(d) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the ((agency)) executive director may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request within five working days of being asked for said clarification, the ((board)) executive director need not respond to it.

(5) All denials of request for public records must be accompanied by a written statement, signed by the secretary (executive director) or designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

(6)(a) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(b) The written request by a person petitioning for prompt review of a decision denying a public record shall be submitted to the board's secretary (executive director) or designee.

(c) Within two business days after receiving a written request by a person petitioning for a prompt review of a decision denying a public record, the secretary (executive director) or designee shall complete such review.

(d) During the course of the review the secretary (executive director) or designee shall consider the obligations of the board to comply fully with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW 42.17.310 through 42.17.315, and the provisions of the statute which require the ((agency)) board to protect public records from damage or disorganization, prevent excessive interference with essential functions of the ((agency)) board, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

(7) Public records and a facility for their inspection will be provided by the secretary (executive director) or designee. Such records shall not be removed from the place designated for their inspection. Copies of such records may be arranged for according to the provisions of subsection (8) of this section.

(8) No fee shall be charged for the inspection of public records. The board may impose a charge for providing copies of public records and for the use by any person of agency equipment to copy public records. Copying charges shall be reasonable and conform with RCW 42.17.300. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

(9) Public records shall be available for inspection and copying during the customary office hours of the administrative office of the board. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and dates of official state board of education business requiring all board staff to be away from the office.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 3; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 180-43-005	Purpose and authority.
WAC 180-43-010	Annual report.
WAC 180-43-015	Rules and policies.

#### **WSR 06-23-009**

#### **PERMANENT RULES**

#### **STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:36 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 180-36 WAC was repealed as the underlying authority for the chapter was removed with the passage of E2SHB 3098 in 2006.

Citation of Existing Rules Affected by this Order: Repealing chapter 180-36 WAC.

Statutory Authority for Adoption: RCW 28A.355.100.

Adopted under notice filed as WSR 06-19-090 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

#### **WSR 06-23-008**

#### **PERMANENT RULES**

#### **STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:34 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 180-43 WAC was repealed as the underlying authority for the chapter was removed with the passage of E2SHB 3098 in 2006.

Citation of Existing Rules Affected by this Order: Repealing chapter 180-43 WAC.

Statutory Authority for Adoption: RCW 28A.600.200.

Adopted under notice filed as WSR 06-19-092 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 180-36-005	Authority and purpose.
WAC 180-36-007	Central purchasing by school districts.
WAC 180-36-010	Definitions.
WAC 180-36-015	Conditions to purchases of property and conveyances of a purchase money security interest therein.

**WSR 06-23-010**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:37 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 180-34 WAC was repealed as the underlying authority for the chapter was removed with the passage of E2SHB 3098 in 2006.

Citation of Existing Rules Affected by this Order: Repealing chapter 180-34 WAC.

Statutory Authority for Adoption: RCW 28A.335.120.

Adopted under notice filed as WSR 06-19-089 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 180-34-005	Authority and purpose.
WAC 180-34-010	General conditions.

**WSR 06-23-011****PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:39 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 180-16-227 is being repealed as implementation timeline is no longer applicable.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-16-227.

Statutory Authority for Adoption: RCW 28A.150.220, 28A.305.140, and 28A.305.130(6).

Adopted under notice filed as WSR 06-19-088 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 180-16-227

Implementation timeline for  
WAC 180-16-220(2).

**WSR 06-23-012****PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed November 2, 2006, 4:42 p.m., effective December 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Language in chapter 180-55 WAC was amended to remove references to public school and/or school districts. With the passage of E2SHB 3098 the state board only has authority to accredit private schools.

Citation of Existing Rules Affected by this Order: Amending chapter 180-55 WAC.

Statutory Authority for Adoption: RCW 28A.305.130(6), 28A.150.220(4), and 28A.305.140.

Adopted under notice filed as WSR 06-19-093 on September 19, 2006.

Changes Other than Editing from Proposed to Adopted Version: The state board voted not to strike language in WAC 180-55-005 (1)(a) through (e) and (g).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2006.

Edith W. Harding  
Executive Director

## Chapter 180-55 WAC

### **PRIVATE SCHOOL ACCREDITATION**

**AMENDATORY SECTION** (Amending WSR 05-08-015, filed 3/28/05, effective 4/28/05)

**WAC 180-55-005 Purpose((s)) and authority.** (1)

**Purpose((s)).** The provision of school accreditation procedures for approved private schools by the state board of education is designed to serve the following purposes:

(a) Support the state board's long-term vision of a performance-based education system ((~~under WAC 180-51-001~~)) by aligning school accreditation requirements to continuous improvement of student learning, achievement, and growth;

(b) Promote educational excellence and equity for every student through enhancement of the quality and effectiveness of the school's educational program in safe and supportive learning environments;

(c) Promote staff growth and commitment to the learning of every student;

(d) Build stronger links with families, parents, and the community by reaching consensus about educational expectations through family, parent, and community involvement;

(e) Provide a statement of accountability to the public; and

(f) ((Assure that school districts, under the district policy on recognizing earned credits under WAC 180-51-050, shall accept credits earned from schools or programs, accredited by the state board of education or other accrediting body as may be recognized by the state board of education pursuant to WAC 180-55-017; and

(g) Facilitate the sharing of)) Validate effective ((schools)) practices and positive impacts on student learning in private schools through an external appraisal process.

(2) **Authority.** The authority for this chapter is RCW 28A.305.130(((6))) (5).

**AMENDATORY SECTION** (Amending WSR 05-08-015, filed 3/28/05, effective 4/28/05)

**WAC 180-55-015 Definitions.** (1) An "accredited school" is a ((public or)) state board of education approved private school that meets statutory requirements and rules established by the state board of education, and one that has satisfactorily completed the accreditation procedures described by the state board of education pursuant to RCW 28A.305.130(((6))) (5) and WAC 180-55-005 through 180-55-020.

(2) "Approved private school" shall mean a school approved by the state board of education pursuant to chapter 28A.195 RCW and chapter 180-90 WAC.

(3) "Accredited" status shall be assigned to ((public or)) state board of education approved private schools that:

(a) Complete and meet fully state board of education requirements for accreditation as described in WAC 180-55-020((5)); or((5))

(b) Participate and qualify in accordance with standards and procedures established by accrediting bodies or processes recognized by the state board of education.

(4) "School improvement plan" shall mean the same as described under WAC 180-16-220 (2)(b) and (d).

(5) "Continuous improvement process" shall mean the ongoing process used by a school to monitor, adjust, and update its school improvement plan.

(6) "Self-review" shall mean the same as described under WAC 180-16-220 (2)(c).

(7) "Appraisal" shall mean an objective, external appraisal of a school's self-review activities and school improvement plan pursuant to WAC 180-55-020(5).

(8) "Recognized accrediting body" shall mean an organization recognized by the state board of education and listed on the state board web site.

(9) "Recognized accrediting process" shall mean the state board of education process managed through the educational service districts for approved private schools.

**AMENDATORY SECTION** (Amending WSR 05-08-015, filed 3/28/05, effective 4/28/05)

**WAC 180-55-017 Criteria for state board of education recognition of accrediting bodies.** (1)(a) A recognized accrediting body shall meet the definition of such pursuant to WAC 180-55-015(8).

(b) Accrediting bodies recognized by the state board of education shall verify that standards for approved private schools seeking accreditation through them meet or exceed the school accreditation standards pursuant to WAC 180-16-220.

(c) Accrediting bodies recognized by the state board of education for the specific purpose of accrediting state board approved private schools, prior to being considered by the state board for recognition, shall have their accreditation standards verified for compliance under (b) of this subsection by a private school advisory committee established by the superintendent of public instruction. If verified, the committee may recommend the accrediting body to the state board for recognition.

(d) A list of recognized accrediting bodies will be maintained on the web site of the state board of education.

~~(2)((a) Public school districts must be approved by the state board of education prior to a school in the district being recommended by a state board of education recognized accrediting body for state accreditation consideration.~~

~~(b) Public schools may not seek accreditation through a sectarian affiliated accrediting body. Public schools may seek accreditation through a state board of education recognized accrediting body or process and be recommended for state accreditation consideration.~~

~~(e)) Private schools must be approved by the state board of education prior to being recommended by a state board of education recognized accrediting body or process for state accreditation consideration.~~

**AMENDATORY SECTION** (Amending WSR 04-04-093, filed 2/3/04, effective 3/5/04)

**WAC 180-55-020 Prerequisite to application for accreditation by ((public schools/)) approved private schools—Types of accreditation—Conditions—Effective periods—Administration of accreditation procedures.** ~~(1)((a) Certification by the state board of education of compliance by a school district with basic education program approval requirements under WAC 180-16-220, or receipt of a waiver from WAC 180-16-225 or 180-18-030, shall be prerequisite to a public school's application to the state board of education for accreditation under WAC 180-55-015 (3)(b).~~

~~(b)) Certification by the state board of education of compliance with private school approval requirements under chapter 28A.190 RCW and chapter 180-90 WAC shall be prerequisite to a private school's application to the state board of education for accreditation under WAC 180-55-015 (3)(b).~~

**(2) Standard accreditation - six years,** shall be granted to ~~((a)) an approved private school after a satisfactory external appraisal of the school's self-review activities and school improvement plan, and approval by the state board of education of the appraisal findings and recommendations by the external site appraisal team.~~

**(3) Conditional accreditation - one year,** for ~~((a)) an approved private school where the external appraisal identifies omissions, inaccuracies or weaknesses in the building's self-review activities, or school improvement plan or continuous improvement process.~~

**(4) Application.** Application for school accreditation shall be made to the state board of education or other body or entity designated by the state board of education. Such application shall be submitted jointly by the appropriate officials of the ~~((school and school district, or))~~ private school and governing board, in accordance with procedures and timelines established by the state board of education.

**(5)(a) External appraisal.** The state board of education, or other body or entity designated by the state board of education, shall direct an external appraisal process for approved private school accreditation purposes. The state board may place yearly limits on the number of schools that may participate in the external appraisal process using the state board accreditation option. The external appraisal shall be conducted by persons external to the approved private school

~~((and district)).~~ The external site appraisal team shall include, but is not limited to, certificated teachers and administrators who may earn continuing education clock hours pursuant to WAC 180-85-033(2).

(b) The external appraisal shall focus on the provisions of WAC 180-16-220 (2)(b), (c) and (d), and 180-55-005(1). The appraisal shall focus on an analysis of the school's self-review activities, the school's improvement plan and its progress and impact, in particular relating to WAC 180-55-005 (1)(c), and the school's continuous improvement process.

**WSR 06-23-014  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed November 3, 2006, 12:03 p.m., effective December 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose is to revise chapter 392-210 WAC, Student testing and evaluation—Washington state honors award program. It has not been updated in a number of years and still lists the Washington precollege test as a testing measure for the Washington state honors award. This test is no longer in existence. The SAT and ACT have replaced it as the measure used to identify award nominees. Other changes to the WAC are for clarification only.

Citation of Existing Rules Affected by this Order: Amending chapter 392-210 WAC.

Statutory Authority for Adoption: RCW 28A.600.070.

Adopted under notice filed as WSR 06-17-118 on August 18, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 23, 2006.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending Order 93-24, filed 11/10/93, effective 12/11/93)

**WAC 392-210-015 Criteria for the selection of Washington state honors award students.** The Washington state honors award program shall recognize the top ten percent of

the students in the state in each year's public and private high school graduating class who have demonstrated outstanding academic achievement. Outstanding academic achievement shall be determined by the following criteria:

(1) An academic achievement index based upon a combination of the combined high school grade point average (calculated as provided in WAC 180-57-055) in the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English which may include American Indian languages and the combined verbal and quantitative composite scores on the ((Washington precollege test)) Scholastic Aptitude Test (SAT) or the American College Test (ACT);

(2) Credits (as defined in WAC 180-51-050) earned in grades nine through ((eleven)) twelve in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language;

(3) Completion of at least seventy-five percent of the graduation requirements for the high school in which the candidate is enrolled; and

(4) Enrollment in at least three academic core subjects in grade twelve.

In order to be considered for a Washington honors award, students must have taken the ((Washington precollege test)) Scholastic Aptitude Test (SAT) or the American College Test (ACT) prior to ((enrollment in grade twelve)) January 31 of the year of graduation and be enrolled in a participating high school as indicated by the principal on forms provided by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

**WAC 392-210-020 Determination of the Washington state honors award academic achievement index.** The superintendent of public instruction shall calculate the academic achievement index based upon an equivalent numeric weighting of the combined high school grade point average in academic core subjects and the combined verbal and quantitative composite scores on the ((Washington precollege test)) Scholastic Aptitude Test (SAT) or the American College Test (ACT). The superintendent of public instruction shall determine the top ten percent of each year's graduating class based upon a ranking of all participating students on the academic achievement index.

AMENDATORY SECTION (Amending Order 86-9, filed 7/18/86)

**WAC 392-210-025 Credits earned in academic core subjects.** To be considered for a Washington state honors award, a student must have earned, during grades nine through ((eleven)) twelve, at least seventy-five percent of the credits required for graduation from his or her high school including a minimum of ten credits in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language.

Each participating high school principal shall verify, on forms provided by the superintendent of public instruction, that each candidate has completed at least seventy-five percent of the school's total graduation credit requirements. The

superintendent of public instruction shall require each student's high school transcript to be verified to assure that each student has earned the minimum credits in each of the academic core subjects. All participating high schools shall make available the grades nine through ((eleven)) twelve transcripts for all participating students on or before ((August 15 of each year)) the date provided annually by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 93-24, filed 11/10/93, effective 12/11/93)

**WAC 392-210-030 Enrollment in academic core subjects during grade twelve required.** To be considered for a Washington state honors award, a student must be enrolled in at least three of the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English during ((the first term of)) the senior year ((excluding summer term)). The minimum enrollment requirement shall be verified in writing by the participating high school principal ((before November 1 of each school year)) on forms provided annually by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

**WAC 392-210-035 Notification of students eligible for honors award.** Commencing with the ninth grade, and each year thereafter, each participating high school shall provide ((, no later than October 1,)) each enrolled student with a copy of the eligibility criteria for the Washington state honors award. The superintendent of public instruction shall provide schools with a suggested format that may be used to notify students.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

**WAC 392-210-040 Notification of Washington honors award recipients.** ((On or before December 15 of each school year)) The superintendent of public instruction shall annually provide to each participating school principal the names of those enrolled students who have been selected for a Washington honors award.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

**WAC 392-210-045 Washington honors award certificate.** The superintendent of public instruction shall prepare annually for each honors award recipient a suitable printed certificate which shall describe the purposes of the award, indicate the year in which the award was given, ((identify the student and his or her high school,)) and be signed by the superintendent of public instruction. The certificate for each honors award recipient shall be delivered to the participating high school principal on or before ((April 1)) May 30 of each school year. Each participating principal shall provide for issuing the certificate to each recipient at the regular high

school commencement or other appropriate time prior to high school commencement.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-210-055

Special consideration for  
1985-86 school year.

**WSR 06-23-038**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 7, 2006, 9:33 a.m., effective December 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required under normal review of rules to update and make clear.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-500, 308-56A-410, 308-56A-525, 308-93-276, and 308-63-090.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 46.12.101.

Adopted under notice filed as WSR 06-18-047 on August 30, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2006.

Liz Luce  
Director

**AMENDATORY SECTION** (Amending WSR 05-14-092, filed 6/30/05, effective 7/31/05)

**WAC 308-56A-410 No application required. When do I not need to apply for a certificate of ownership?** A Washington vehicle dealer need not apply for ((title)) certificate of ownership in his own name when:

(1) A vehicle is acquired that is titled and the title is properly released; or

(2) One vehicle dealer transfers a particular vehicle to another vehicle dealer, unless precluded by other regulations;

(3) The dealer has a properly executed affidavit of loss from the legal owner of record and release of interest from

the registered and legal owners of record for a Washington titled vehicle.

(4) An abandoned vehicle/vessel is purchased by a Washington licensed dealer and intended for retail sale.

**AMENDATORY SECTION** (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

**WAC 308-56A-500 Definitions.** The following definitions apply to terms used in chapters 46.12 and 46.16 RCW and chapter 308-56A WAC:

(1) "Affidavit in lieu of title" is a written declaration confirming the certificate of ownership, registration certificate, validation tab are unavailable, lost, stolen, destroyed or mutilated. The affidavit in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the affidavit in lieu of title must be notarized or certified as described in WAC 308-56A-270.

(2) "Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.

(3) "Affixed" means attached.

(4) "Brands" means a permanent notation on the certificate of ownership and vehicle registration certificate that records a circumstance or condition involving a vehicle.

(5) "Brands incident date" is the date that a brand was first applied to a vehicle. For states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS), it's the date the brand was first reported. For all other states/jurisdictions, it is established by using the date the current title was issued. Brands on Washington records prior to the effective date of this rule will reflect a brand incident date equal to the date the last Washington certificate of ownership was issued.

(6) "Certificate of ownership" (also referred to as "certificate of title" or "title") is a legal document indicating proof of ownership and will establish a fact or sustain a judgment unless contradictory evidence is produced. A certificate of ownership may be a document other than a title when a title document is not issued by a jurisdiction. For example, for Canadian vehicles, the certificate of ownership is the registration.

(7) "Comment" means an indication on the certificate of ownership, vehicle title/registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type or a previous condition of the vehicle.

(8) "Commercial parking company" means any business directly engaged in providing vehicle parking upon property owned or controlled by the business and approved for public parking of vehicles.

(9) "Current license plate registration" means the current registration or one that has been expired less than one year.

(10) "Declaration in lieu of title" is a written statement confirming the certificate of ownership, registration certifi-

cate, validation tab is unavailable, lost, stolen, destroyed, or mutilated. The declaration in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the declaration in lieu of title must be signed under penalty of perjury, as described in WAC 308-56A-270.

(11) "Declaration of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed, or mutilated. The declaration of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the declaration of loss release of interest must be signed under penalty of perjury, as described in WAC 308-56A-270.

(12) "Department" means the same as described in RCW 46.04.162.

(13) "Department temporary permit" is a permit issued temporarily in lieu of permanent registration and license plates when required documentation is unavailable.

(14) "Electronic filing" is the use of an electronic method to transmit information to the department that may include, but is not limited to, the use of the internet and facsimile.

(15) "Involuntary divestiture" means a change in vehicle ownership without the registered owner's involvement.

(16) "Joint tenancy with rights of survivorship" (JTWROS) means two or more people who own a vehicle in joint tenancy with the right to own individually if one of them dies.

(17) "Jurisdiction code" means an abbreviation assigned by the department generally based on the U.S. Postal Service designation that indicates state, province, district, or country.

(18) "Legal owner" means the same as described in RCW 46.04.270.

(19) "Lien holder" means a person or entity that has a legal right or interest in another's property until a debt or duty that it secures is satisfied.

(20) "Natural person" means a human being.

(21) "Not eligible for road use" (NEFRU) means a vehicle that does not meet Federal Motor Vehicle Safety standards, other federal and/or state standards for public road use as adopted, applied, and enforced by the Washington state patrol described in RCW 46.37.005.

(22) "A declaration under penalty of perjury" means a statement signed by the applicant to the effect - "I declare under penalty of perjury under the laws of the state of Washington that the information I have provided on this form is true and correct. Anyone who knowingly makes a false statement may be guilty of a crime under state law."

(23) "Person" means the same as described in RCW 46.04.405.

(24) "Personal representative" means:

(a) An individual appointed by the court; or

(b) An individual named in the last will and testament and confirmed by the court to manage the estate of a deceased person.

Personal representative may also include executor, administrator, special administrator, and guardian or limited guardian and special representative as defined in RCW 11.02.005(1).

(25) "Registered owner" means the same as described in RCW 46.04.460.

(26) "Security interest" means a property interest created by agreement or by operation of law to secure performance of an obligation (repayment of a debt).

(27) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection (16) of this section.

(28) "Secured party" means in this instance the same as "lien holder" as defined in subsection (16) of this section.

(29) "Standard brand" is a brand found on the brands list maintained by the National Motor Vehicle Title Information System (NMVTIS) program.

(30) "Transferee" means a person to whom a vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee, when applicable.

(31) "Transferor" means a person who transfers ownership in a vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor, when applicable.

(32) "Unique brand" means a brand issued by a state that is not participating in the National Motor Vehicle Title Information System (NMVTIS) program and does not appear on the brands list maintained by NMVTIS.

(33) "Vehicle seller's report of sale" is a document or electronic record transaction that protects the seller of a vehicle from certain criminal and civil liabilities arising from use of the vehicle by another person after the vehicle has been sold or a change of ownership has occurred.

(34) A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

(35) "Washington vehicle licensing office" means an office that is operated by the department or an agent or sub-agent appointed under RCW 46.01.140 for the purpose of carrying out the vehicle titling and registration provisions in Title 46 RCW.

#### AMENDATORY SECTION (Amending WSR 02-24-014, filed 11/25/02, effective 12/26/02)

**WAC 308-56A-525 Vehicle seller's report of sale.** (1) ((What is a vehicle seller's report of sale? A vehicle seller's report of sale is a document or electronic record transaction that protects the seller of a vehicle from certain criminal and civil liabilities arising from use of the vehicle by another person after the vehicle has been sold or a change in ownership has occurred.

((2))) **Who must file a vehicle seller's report of sale?** With the exception of certain vehicle transfers by registered Washington vehicle dealers, and vehicles disposed of by licensed vehicle wreckers, Washington law (RCW 46.12.101) requires ((submission of)) filing a vehicle seller's report of sale by any person or business that transfers their interest in a Washington titled vehicle to anyone else. For the purposes of this rule, transferring interest includes, but is not

limited to, selling, gifting, trading or disposing of your vehicle, but does not include the creation, deletion or change of a security interest.

((3)) **(2) When must a completed vehicle seller's report of sale be filed?** Vehicle seller's report of sale must be ((submitted)) received by the department within five days of the date of sale, gift, trade or other disposition of the vehicle, excluding Saturdays, Sundays, and state and federal holidays.

((4)) **(3) Who is the seller?** The seller is the current registered owner of record according to the computer file kept by the department. The seller is a person (individual or business) who transfers their right of ownership of a vehicle to another person or business.

**(4) Who is the purchaser?** The purchaser is a person (individual or business) who takes a vehicle into their possession, by voluntary acquisition.

**(5) Why complete and file a vehicle seller's report of sale?** It is in the seller's best interest to file the properly completed vehicle seller's report of sale to protect the seller in the event the buyer does not make application for ownership and then accumulates parking tickets, or towing charges, is involved in an uninsured accident or used in illegal activity, etc.

Vehicle seller's report of sale received by the department of licensing that are incomplete will be filed with the department; however, those that do not meet the requirements of the law may not protect the seller from any civil or legal action if the vehicle is subsequently abandoned or involved in illegal activity.

**(6) Who is the purchaser?** The purchaser is the person who bought, received as a gift, obtained through a trade or received a disposed vehicle.

**(7) What information is required on the vehicle seller's report of sale?** You are required to provide information contained in RCW 46.12.101.

**(8) How do I file my vehicle seller's report of sale?** You may file your seller's report of sale ((in the following ways)) through:

(a) ((Through)) Your local vehicle/vessel licensing office; or

(b) ((Mail it to)) The department by mail; or

(c) ((Through)) The internet.

**((9)) (7) What information is required on the vehicle report of sale?** You are required to provide information contained in RCW 46.12.101 that includes:

(a) The date of sale or transfer;

(b) Name(s) and address of seller;

(c) Name(s) and address of transferee (buyer);

(d) Description of vehicle; and

(e) Purchase price.

When you mail a vehicle seller's report of sale to the department, you will not receive a confirmation or receipt. You may wish to make a photocopy of the report of sale for your records prior to sending it to the department.

**(8) Is there a fee for recording a vehicle seller's report of sale?** Yes. It applies when a report of sale is filed through your local vehicle licensing office as authorized by RCW 46.01.140 (5)(b).

**((10)) (9) May a vehicle seller's report of sale be removed from my vehicle record?** Yes. As a registered owner, you may have a vehicle seller's report of sale removed from your vehicle record through your local vehicle licensing office, or by notifying the department in writing. You will need to provide the reason you are removing the vehicle seller's report of sale from your vehicle record.

**((11)) (10) How will I ((prove)) show that I filed a completed vehicle seller's report of sale?**

((a)) When you file a vehicle seller's report of sale at any Washington vehicle licensing office, you will be provided with a receipt ((showing:)).

**((12)) (11) When you file a vehicle report of sale on the internet, you will have the option of printing your receipt. Both receipts will show the following information:**

(a) Date the report of sale was filed;

((b)) Description of vehicle;

((c)) Name and address of agent/subagent where filed (not included when filing through the internet);

((d)) Date of sale;

((e)) Purchase price if provided;

((f)) Name(s) and address of seller;

((g)) Name(s) and address of transferee (buyer if provided).

**((13)) (12) When you file a vehicle seller's report of sale on line, you will be provided a receipt showing:**

(i) Date the report of sale was filed;

(ii) Description of vehicle;

(iii) Date of sale;

(iv) Purchase price;

(v) Name(s) and address of seller;

(vi) Name(s) and address of transferee (buyer).

When you mail a vehicle seller's report of sale to the department, you will not receive a confirmation or receipt. You may wish to make a photocopy of the report of sale for your records prior to sending it to the department.)

Washington law makes it clear that it is a felony to knowingly make a false statement of fact. The penalty, upon conviction, ((shall)) must be a fine of not more than five thousand dollars or imprisonment of not more than ten years, or both the fine and imprisonment. (RCW 46.12.210.)

**AMENDATORY SECTION** (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-090 Vehicle wrecker—Records and procedures for monthly reports. What records must I keep and how do I handle the monthly report?** (1) **Wrecker books and files.** The wrecker ((shall)) must maintain books and files ((which shall)) that contain the following:

(a) A record of each vehicle or part acquired giving:

(i) A description of the vehicle or part by make, model, year, and for major component parts, except core parts, the vehicle identification number and "yard number" assigned at the time the vehicle or major component part was placed in the wrecking yard;

(ii) The date purchased or acquired by the vehicle wrecker, and the name of the person, firm or corporation from which the vehicle or part was obtained;

(iii) The certificate of ((title)) ownership number if registered in a title state, or registration number if a ((nontitle)) nontitling state; or description of the document used in lieu of title, such as an affidavit of sale ((or)), a bill of sale for a vehicle or vehicle part;

(iv) The name of the state and license number in the state that a vehicle was last registered; and

(v) A statement indicating whether any used car or truck at least six years but not more than twenty years old met the market value threshold amount immediately before it was wrecked, destroyed or damaged, as required by RCW 46.12.070 and WAC 308-56A-460(3). If this statement is not provided, when required, the department will treat the vehicle as if the wrecker indicated that the market value threshold was met when ((required)) wrecked.

(b) A record of the disposition of the motor, body, and major component parts giving the name of the person purchasing the part(s), if any. Sales to scrap processors ((shall)) must be accompanied by an invoice or bill of sale, listing each vehicle by its yard number. The wrecker ((shall)) must retain a copy of ((such)) the invoice or bill of sale for purposes of inspection for three years.

These records will be subject to inspection by authorized representatives of the department and law enforcement officials during regular business hours. The ((foregoing)) information ((shall)) must be entered in the wrecker's records within two business days of the event requiring the entry, such as receipt of a vehicle.

**(2) The vehicle wrecker must furnish written reports.**

By the tenth of the month following acquisition of vehicles entered into the wrecking yard inventory, each wrecker must submit a report on the form prescribed by the department documenting that ((those)) the vehicles were acquired and entered into the wrecking yard inventory during the previous month. Vehicles being held in the segregated storage area awaiting ownership documents, ((pursuant to)) under WAC 308-63-070(8), will not be reported. The report ((shall)) must be made in duplicate. The original ((shall)) must be sent to the department and the duplicate retained for the wrecker's files. If no vehicles were acquired during that month, the monthly report must be sent in stating "none." The report ((shall)) must contain ((such)) information for vehicles only as the wrecker is required to keep by subsection (1)(a)(i), (ii), (iii), (iv), and (v) of this section. The report must be accompanied by properly endorsed certificates of ((title)) ownership or other adequate evidence of ownership and registration certificates((, provided that)). Records on acquisitions and sales of vehicle parts need not be included in reports submitted to the department but records ((shall)) must be kept for three years from date of purchase and made available for inspection.

**(3) Identity of vehicles in yard.** ((All vehicles placed in the wrecking yard shall be identified by a yard number as)) A yard number must identify all vehicles placed in the wrecking yard. The number must be assigned in the wrecker's records with numerals marked so as to be clearly visible and legible. If a part of a vehicle is sold which has the number on it, the yard number of the vehicle ((shall)) must be remarked in another location on the vehicle.

**AMENDATORY SECTION** (Amending WSR 02-24-013, filed 11/25/02, effective 12/26/02)

**WAC 308-93-276 Vessel seller's report of sale.** (1) ((What is a vessel seller's report of sale? A vessel seller's report of sale is a document or electronic record transaction that protects the seller of a vessel from certain criminal and civil liabilities arising from use of the vessel by another person after the vessel has been sold or a change in ownership has occurred.

((2))) **Who must file a vessel seller's report of sale?** With the exception of certain vessel transfers by registered Washington vessel dealers, Washington law (RCW 88.02.070 and 46.12.101) requires ((submission)) filing of a vessel seller's report of sale by any person or business that transfers their interest in a Washington registered/titled vessel to anyone else. For the purposes of this rule, transferring an interest includes, but is not limited to, selling, gifting, trading or disposing of your vessel, but does not include the creation, deletion, or change of a security interest.

((3))) **When must a vessel seller's report of sale be filed?** Vessel seller's report of sale must be ((submitted)) received by the department within five days of the date of sale, gift, trade or other disposition of the vessel, excluding Saturdays, Sundays, and state and federal holidays.

((4))) **Who is the seller?** The seller is ((the current registered owner of record according to the computer file kept by the department)) a person (individual or business) who transfers their right of ownership of a vessel to another person or business.

((5)) **Why complete and file a vessel seller's report of sale?** It is in the seller's best interest to file the properly completed vessel seller's report of sale to protect the seller in the event the buyer/new owner does not make application for ownership and then accumulates moorage charges, towing charges, or becomes involved in an uninsured accident or used in illegal activity, etc.

Vessel seller's report of sale received by the department of licensing that are incomplete will be filed with the department; however, those that do not meet the requirements of the law may not protect the seller from any civil or legal action if the vessel is subsequently abandoned or involved in illegal activity.

((6))) **Who is the purchaser?** The purchaser is ((the person who bought, received as a gift, obtained through a trade or received a disposed vessel)) a person (individual or business) who takes a vessel into their possession, by voluntary acquisition.

((7))) **How do I file my vessel seller's report of sale?** You may file your seller's report of sale by mailing it to the department.

**(6) What information is required on the vessel seller's report of sale?** You are required to provide the following information:

- (a) The date of the sale or transfer;
- (b) Name(s) and address of seller;
- (c) Name(s) and address of transferee (buyer);
- (d) Description of vessel including:
  - (i) Vessel hull identification number; and
  - (ii) Vessel registration number.

**((8) How do I file my vessel seller's report of sale?**  
~~You may file your seller's report of sale in the following ways:~~

- (a) Through your local vehicle licensing office;
- (b) Mail it to the department.

**((9) Is there a fee for recording a vessel seller's report of sale?** Yes. It applies when a report of sale is filed through your local vehicle licensing office as authorized by RCW 46.01.140 (5)(b).

**((10)) (7) May a vessel seller's report of sale be removed from my vessel record?** Yes. As a registered owner, you may have a vessel seller's report of sale removed ((from your vessel record through your local vehicle licensing office, or)) by notifying the department in writing. You will need to provide the reason you are removing the report of sale ((from your vessel record)).

**((11)) (8) How will I ((prove)) show that I filed a vessel seller's report of sale?** ((When you file a vessel seller's report of sale at any Washington vehicle licensing office, you will be provided with a receipt showing:

- (a) Date the report of sale was filed;
- (b) Description of vessel;
- (c) Name and address of agent/subagent where filed;
- (d) Date of sale;
- (e) Purchase price;
- (f) Name(s) and address of seller;
- (g) Name(s) and address of transferee (buyer).

When you mail a vessel seller's report of sale to the department you will not receive a confirmation or receipt. You may wish to make a photocopy of the report of sale for your records prior to sending it to the department.) To obtain a copy of the filed seller's report of sale, you must contact the department.

Washington law makes it clear that it is a felony to knowingly make a false statement of fact. The penalty, upon conviction, shall be a fine of not more than five thousand dollars or imprisonment of not more than ten years, or both the fine and imprisonment. (RCW 46.12.210.)

Statutory Authority for Adoption: Chapter 70.95N RCW, Electronic product recycling.

Adopted under notice filed as WSR 06-15-125 on July 19, 2006.

Changes Other than Editing from Proposed to Adopted Version: Based on public comments, ecology made some changes to the rule language. These changes include: Expansion of the tiers used in the fee schedule to include two new tiers; and further clarification of definitions and other language contained in the rule. Please see the concise explanatory statement for more details.

A final cost-benefit analysis is available by contacting Cathy Carruthers, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2006.

Jay J. Manning  
Director

## Chapter 173-900 WAC

### ELECTRONIC PRODUCTS RECYCLING PROGRAM

#### PART I GENERAL REQUIREMENTS

##### NEW SECTION

**WAC 173-900-010 Purpose.** (1) The Washington state legislature has required that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products (CEPs) be established throughout Washington state. The legislature determined that such a system must encourage the design of electronic products that are less toxic and more recyclable and that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.

(2) This chapter implements the Electronic Product Recycling Act, chapter 70.95N RCW. This chapter:

(a) Defines the administrative and enforcement responsibilities delegated to the department of ecology; and

(b) Describes the processes and procedures that ecology will use to carry out those responsibilities.

**NEW SECTION**

**WAC 173-900-020 Applicability.** This chapter applies to:

- (1) Any manufacturer, as defined in this chapter.
- (2) Any person who collects or transports covered electronic products in Washington state for recycling.
- (3) Any retailer that offers for sale or sells electronic products and covered electronic products in or into Washington state.

**NEW SECTION**

**WAC 173-900-030 Definitions.** "Authority" means the Washington materials management and financing authority.

"Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

"Board" means the board of directors of the Washington materials management and financing authority.

"Brand" means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

"Brand label" typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

"Certified" means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

"Collector" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by ecology.

"Computer" means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. "Computer" does not include any of the following:

- (a) A machine capable of supporting two or more work stations simultaneously for computing;
- (b) Computer servers marketed to professional users; or
- (c) Retail store terminals or cash registers, used at customer checkout in the retail industry.

"Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

"Covered electronic product" or "CEP" includes any one of the following four types of products that has been used

in Washington state by any covered entity, regardless of original point of purchase:

- (a) Any monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

(a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;

- (b) Monitoring and control instruments or systems;
- (c) Medical devices;

(d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;

(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

(g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

"Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

"Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

"Desktop" is a computer designed for nonportable use.

"Ecology" means the department of ecology.

"Electronic product" includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

"Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer as described in this chapter.

"Existing manufacturers" are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, as of the effective date of this chapter.

"Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

"Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

"Laptop" is a computer.

**"Manufacturer"** means the person who:

- (a) Has legal ownership of the brand, brand-name or cobrand of electronic products sold in or into Washington state;
- (b) Imports, or sells at retail, electronic products and meets (a) of this subsection; or
- (c) Imports an electronic product branded by a manufacturer that has no physical presence in the United States of America.
- (d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.

**"Manufacturers who have never sold CEPs"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose brand names of covered electronic products are represented in the Washington state return share.

**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are represented in the Washington state return share.

**"Monitor"** is a video display device without a tuner that can display pictures and sound and is used with a computer.

**"New entrant"** means:

- (a) A manufacturer of televisions that have been sold in Washington state for less than ten consecutive years; or
- (b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five consecutive years;
- (c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

**"New manufacturers to Washington state"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after the effective date of this chapter. These manufacturers become existing manufacturers for all program years after participation the first year.

**"Offering for sale"** means providing electronic products for purchase, in or into Washington state, regardless of sales method.

**"Orphan product"** means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

**"Person"** means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, non-profit organization, or government agency.

**"Plan's equivalent share"** means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

**"Plan's return share"** means the sum of the return shares of each manufacturer participating in that plan.

**"Portable computer"** is a computer.

**"Premium service"** means services such as at-location system upgrade services provided to covered entities and at-

home pickup services offered to households. **"Premium service"** does not include curbside service.

**"Processor"** means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and ecology. A processor may also salvage parts to be used in new products.

**"Product type"** means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

**"Program"** means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

**"Program year"** means each full calendar year after the program has been initiated.

**"Recycling"** means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. **"Recycling"** does not include energy recovery or energy generation by means of combustible unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

**"Retailer"** means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

**"Return share"** means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.

**"Reuse"** means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

**"Sell"** or **"sold"** means an electronic product is purchased regardless of sales method.

**"Small business"** means a business employing less than fifty people.

**"Small government"** means a city in Washington state with a population less than fifty thousand, a county in Washington state with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

**"Standard plan"** means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

**"Television"** is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

**"Transporter"** means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but

does not include any entity or person that hauls their own unwanted electronic products.

**"Unwanted electronic product"** means a covered electronic product that has been discarded or is intended to be discarded by its owner.

**"White box manufacturer"** means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

**"Video display devices"** include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

#### NEW SECTION

**WAC 173-900-040 Required brand labeling.** (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

#### NEW SECTION

**WAC 173-900-050 Offering for sale or selling covered electronic products (CEPs) in or into Washington.** As of January 1, 2007, until December 31, 2008:

(1) In order for a manufacturer to offer for sale or sell a CEP in or into Washington state, the manufacturer's brand name must be on the "Manufacturer Registration List for the Electronic Product Recycling Program" posted on ecology's web site and the manufacturer must be in "pending" or "in compliance" status.

(2) In order for a retailer to offer for sale or sell a CEP in or into Washington state, on the date the product was ordered, the brand name must be on the "Manufacturer Registration List for the Electronic Product Recycling Program" posted on ecology's web site, and the manufacturer must be in "pending" or "in compliance" status.

## PART II

### MANUFACTURER REQUIREMENTS

#### NEW SECTION

**WAC 173-900-200 Manufacturer registration. Registration:**

(1) A manufacturer is registered under this chapter when:  
 (a) Ecology has determined the manufacturer's registration form is complete and accurate; and

(b) The manufacturer has paid their required administrative fee.

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

**(3) The following manufacturers must register with ecology:**

Type of Manufacturer	Initial Registration Due Date
<b>Existing manufacturers</b>	On or before January 1, 2007.
<b>New manufacturers to Washington state</b>	Prior to the offering for sale of their CEPs for sale in/into WA.
<b>Manufacturers who have never sold CEPs</b>	Within sixty days of ecology sending notice that their brand names were found in the return share.
<b>Manufacturers who previously manufactured</b>	Within sixty days of ecology sending notice that their brand names were found in the return share.

**(4) Manufacturer registration form:** The manufacturer must use the manufacturer registration form provided by ecology which must include all of the following:

(a) The name, contact, and billing information of the manufacturer;

(b) The manufacturer's brand names of CEPs, including:

(i) All brand names sold in Washington state in the past, including "years sold";

(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name; and

(iii) All brand names the manufacturer manufactures but does not have legal ownership of the brand;

(c) When a word or phrase is used as the label the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(d) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo or image and a general description of the different ways in which it may appear on the manufacturer's electronic products;

(e) The method or methods of sale used in or into Washington state;

(f) Recycling plan participation information; and

(g) Signature of the responsible individual. The registration form must be signed by the individual responsible for implementing the manufacturer's requirements under this chapter. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(5) **Submitting the registration form:** The manufacturer must either submit the:

(a) Form via e-mail or internet service; or

(b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

300 Desmond Drive

Lacey, WA 98503

**(6) Administrative fee:**

(a) All manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-210 Administrative fee).

(b) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(c) New manufacturers must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

**(7) Submitting the administrative fee:**

(a) The manufacturer must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(b) The manufacturer must send payment to the following address:

Department of Ecology  
Electronic Product Recycling Program  
P.O. Box 5128  
Lacey, WA 98509-5128

(8) **Registration review and status:** Within five business days of receiving a manufacturer registration form and the required administrative fee, ecology will post the manufacturer's name on a list called "Manufacturer Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of manufacturers, their brand names and their registration status. Each manufacturer on the list will be assigned to one of the following registration status categories:

(a) **Pending** means ecology has received the appropriate manufacturer's administrative fee and is reviewing the manufacturer's registration form. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state while in "pending" status.

(i) If the form is complete and accurate, ecology will change the manufacturer's status from "pending" to "in compliance."

(ii) If the form is not complete and accurate, ecology will send notice, via certified mail, to the manufacturer identifying what corrections and additional information is needed, and requesting a revised form. The manufacturer will have thirty days from receipt of the notice to submit to ecology a revised registration form. If the form is corrected and the required additional information is submitted, ecology will change the manufacturer's status from "pending" to "in compliance."

(iii) If the form is not corrected, or the required additional information is not submitted, within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."

(b) **Registered** or "in compliance" means ecology has reviewed the manufacturer registration form and determined the form is complete and accurate and the manufacturer has paid the required administrative fee. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state.

(c) **In violation** means the manufacturer is in violation of this chapter.

(9) **Annual registration:** Manufacturers must submit their annual registration renewal form and required administrative fee to ecology no later than January 1 of each calendar year.

(10) **Registration updates:** A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.

(11) **Registration violation:** As of January 1, 2007, it is a manufacturer violation if either a manufacturer or retailer offers for sale or sells the manufacturer's CEPs in or into Washington state and the manufacturer is not registered as required above. When a manufacturer registration violation occurs:

(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer Registration List for the Electronic Product Recycling Program";

(b) The manufacturer's CEPs cannot be sold or offered for sale in Washington state; and

(c) The manufacturer is subject to penalties under WAC 173-900-600.

**(12) Corrective actions:**

(a) If a manufacturer is in "in violation" status, ecology will not return them to "pending" status while the manufacturer corrects the violations.

(b) If ecology changes a manufacturer to "in violation" as a result of a violation, then in order to once again be listed as "in compliance" on the "Manufacturer Registration List for the Electronic Product Recycling Program," the manufacturer must:

(i) Submit their registration form and ecology must determine the form is complete and accurate;

(ii) Pay their appropriate administrative fee;

(iii) Correct any other violations; and

(iv) Pay or settle any penalties due to ecology (WAC 173-900-600).

**(13) Notification to retailers:** A manufacturer may notify retailers, in writing, if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.

## NEW SECTION

**WAC 173-900-210 Administrative fee. (1) Legislative mandate.**

The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.

**(2) Data.**

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

(i) Generally available market research data;

(ii) CEP unit data supplied by manufacturers about brands they manufacture or sell; or

(iii) CEP unit data supplied by retailers about brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

**(3) Distribution:**

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-200).

Tiers	Manufacturer's Market Share
Tier 1	5% or greater
Tier 2	1% to < 5%
Tier 3	0.1% to < 1%
Tier 4	0.03% to < 0.1%
Tier 5	0.01% to < 0.03%
Tier 6	0% but < 0.01%
Tier 7	Manufacturers who previously manufactured

**(4) Calculating the administrative fee:** Ecology will calculate the tiers based on the combined unit sales of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

**(a) Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

**(b) Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted biennially by the FGF as calculated under chapter 43.135 RCW (Fee<sub>FGF</sub>).

**(5) Tier placement:**

**(a) Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received by ecology. If ecology has no data, ecology will place the manufacturer in Tier 4.

**(b) New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless ecology has CEP unit data.

**(c) Manufacturers who have never sold CEPs:** Ecology will assign these manufacturers to Tier 6.

**(d) Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

**(6) Publication of tier assignment:**

**(a) Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

**(b) Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years,

ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) **Final tier schedule:** Ecology will publish the agency's final decision on the final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

**(7) Tier reassignment requests:**

(a) **Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

(ii) **New manufacturers** may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) **Manufacturers who have never sold CEPs** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(c) **Submitting the request:** To request tier reassignment, the manufacturer must do one of the following:

(i) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or

(ii) Send a written letter to ecology including the number of units of CEPs, sold in the prior calendar year, in or into Washington state.

(iii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

## **PART III** **TRANSPORTERS AND COLLECTORS**

### NEW SECTION

**WAC 173-900-300 Transporter and/or collector registration.** (1) As of September 1, 2007, all transporters and collectors must be registered with ecology in order to transport or collect CEPs.

(2) To confirm the registration status of a transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

(4) **Transporter and/or collector registration:** Each transporter and/or collector must submit an annual registration form to ecology.

(a) **Existing transporters and/or collectors:** Transporters and/or collectors who transport or collect CEPs in Washington state on the effective date of this chapter and who plan to continue doing so, must register with ecology no later than September 1, 2007.

(b) **New transporter and/or collector registration:** Transporters and/or collectors who begin to transport or collect CEPs in Washington state after September 1, 2007, may submit their registration form to ecology at any time prior to beginning to transport or collect CEPs.

(5) **Transporter and/or collector annual registration:** Transporters and/or collectors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year.

(6) **Registration updates:** A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.

(7) **Transporter and/or collector registration form:** Each transporter and/or collector must use the registration

form provided by ecology and must include all of the following:

- (a) Contact and location information;
- (b) Business license information;
- (c) Permit information;
- (d) Description of services provided;
- (e) Geographic areas where services are provided; and
- (f) Signature of responsible individual.

The registration form must be signed by the individual responsible for implementing the requirements under this chapter for the transporter and/or collector. Signing the form means the company has provided accurate and complete information on the form.

**(8) Submitting the transporter and/or collector registration form:** The transporter and/or collector must either submit the:

- (a) Form via e-mail or internet service; or
- (b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:  
 Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 P.O. Box 47600  
 Olympia, WA 98504-7600  
 Or  
 For Courier:  
 Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 300 Desmond Drive  
 Lacey, WA 98503

**(9) Registration review and status:** After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:

(a) **Pending** means ecology is reviewing the transporter's and/or collector's registration form. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "pending" status.

(i) If ecology determines the registration form is complete and accurate, ecology will change the transporter's/collector's status from "pending" to "in compliance."

(ii) If ecology determines the form is not complete or accurate or additional information is needed, ecology will send notice, via certified mail, to the transporter and/or collector identifying what corrections and additional information is needed, and request a revised form. The transporter and/or collector will have thirty days from receipt of the notice to submit to ecology a revised registration form.

(iii) If the corrections are not made, or additional information is not provided within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."

(b) **Registered** or "in compliance" means ecology determined the registration form was complete and accurate. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "in compliance" status.

(c) **In violation** means the transporter and/or collector is in violation of this chapter (see WAC 173-900-630 and 173-900-620). The transporter and/or collector must not transport or collect CEPs in Washington state while in the "in violation" category.

**(10) Registration violation:** If a transporter and/or collector does not submit their registration form as required above:

- (a) Ecology will assign the transporter and/or collector to the "in violation" category on the "Transporter/Collector Registration List for the Electronic Product Recycling Program";
- (b) A transporter must not transport CEPs in Washington state;
- (c) A collector must not collect CEPs in Washington state;
- (d) The transporter is subject to penalties under WAC 173-900-630; and
- (e) The collector is subject to penalties under WAC 173-900-620.

**(11) Corrective action:** In order for ecology to change a transporter and/or collector from the "in violation" status to "in compliance" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:

- (a) Submit their registration form and ecology must determine the form is complete and accurate; and
- (b) Pay or settle any penalties to ecology.

## PART IV

### WARNING, VIOLATIONS, AND PENALTIES

#### NEW SECTION

**WAC 173-900-600 Manufacturer—Warning, violations, and penalties.** (1) As of January 1, 2007, all manufacturers of CEPs must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.

(2) Ecology will place a manufacturer in "in violation" status if a violation, as described in this chapter, is committed by the manufacturer.

#### **(3) Types of violations:**

**(a) Registration violation:** As of January 1, 2007:

(i) It is a manufacturer violation if a manufacturer offers for sale or sells CEPs in or into Washington state and is not registered under this chapter.

(ii) It is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status and the retailer offers for sale or sells those CEPs.

**Notification to retailers:** A manufacturer may notify, in writing, retailers if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.

(iii) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the manufacturer.

(b) **Unlabeled electronic products violations:** As of January 1, 2007, it is a manufacturer violation if a manufacturer, or a retailer, offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name. Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the manufacturer.

**(4) Warnings and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, for the first violation of subsection (3) of this section. The written warning will include a copy of the requirements to let the manufacturer know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for the same violation.

(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.

**NEW SECTION**

**WAC 173-900-610 Retailer—Warning, violations, and penalties. (1) Types of violations:**

(a) **Registration violation:** As of January 1, 2007, it is a retailer violation if a retailer "offers for sale" or "sells" CEPs if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status.

(i) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, or a manufacturer in "in violation" status, each unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a violation even if the manufacturer fails to register.

(b) **Unlabeled electronic products violations:** As of January 1, 2007, a retailer must not "offer for sale" or "sell" an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(i) Each unlabeled unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the "offering for sale" or "sale" of these electronic products is not a violation.

**(2) Warning and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the retailer for the first violation for either subsection (1)(a) or (b) of this section. The written warning will include a copy of the requirements to let the retailer know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.

**NEW SECTION**

**WAC 173-900-620 Collector—Warning, violations, and penalties. (1) Types of violations:** (1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.

**(2) Collection of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for collectors to collect CEPs in Washington state if the collector is not registered with ecology.

**(3) Collector warning and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the collector for the first violation of this section. The written warning will include a copy of the requirements to let the collector know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.

**NEW SECTION**

**WAC 173-900-630 Transporter—Warning, violations, and penalties. (1) Types of violations:** (1) Ecology will place a transporter in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on

ecology's web site if a violation is committed by the transporter.

For a transporter, "in violation" status means the transporter must not transport CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.

**(2) Transportation of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for transporters to transport CEPs in Washington state if the transporter is not registered with ecology.

**(3) Transporter warning and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the transporter for the first violation of this section. The written warning will include a copy of the requirements to let the transporter know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2006.

Terry Bergeson  
State Superintendent

**AMENDATORY SECTION** (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

**WAC 180-57-005 Authority.** The authority for this chapter is RCW 28A.305.220 as recodified as a new section in chapter 28A.230 RCW by section 418, chapter 263, Laws of 2006 which authorizes the ((state board of education)) superintendent of public instruction in consultation with the higher education coordinating board, the state board for community and technical colleges, and the work force training and education coordinating board to develop a standardized high school transcript and to establish definitions for credits and hours for use by all common school districts.

**AMENDATORY SECTION** (Amending Order 18-84, filed 12/10/84)

**WAC 180-57-030 Definition—Standardized high school transcript.** As used in this chapter, "standardized high school transcript" shall mean the standardized content specified in WAC ((180-57-070)) 392-415-070. Such transcript usually is completed by the student's graduation from the twelfth grade but may extend for some students through the school year in which the student becomes twenty-one years of age.

**AMENDATORY SECTION** (Amending WSR 03-04-055, filed 1/29/03, effective 3/1/03)

**WAC 180-57-050 Grade reporting and calculation system.** (1) The standardized high school transcript shall report the marks/grades earned by students in courses as follows. It is not required to adopt a marking/grading system that uses pluses or minuses or, if adopted, to report pluses or minuses on standardized transcripts.

(a)	A	=	4.0
(b)	A-	=	3.7
(c)	B+	=	3.3
(d)	B	=	3.0
(e)	B-	=	2.7
(f)	C+	=	2.3
(g)	C	=	2.0
(h)	C-	=	1.7

[Filed November 7, 2006, 11:44 a.m., effective December 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule is proposed to conform to change made by the legislature in 2006 to transfer authority from the state board of education to the superintendent of public instruction. The rules are also changed to conform to the statutory requirement that the transcript continue to require a notation of whether the student has earned a certificate of academic or individual achievement for students entering the ninth grade in the 2004-05 school year and beyond. The rules follow the statute and eliminate the requirement that the transcript include the scale scores, the scholar designation and whether or not an alternative assessment was used.

Citation of Existing Rules Affected by this Order: Amending and recodified chapter 180-57 WAC.

Statutory Authority for Adoption: [RCW 28A.230.125].

Adopted under notice filed as WSR 06-19-046 on September 15, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

(i)	D+	=	1.3
(j)	D	=	1.0
(k)	E or F	=	0.0

(2) The minimal passing mark/grade is D = 1.0. Nonnumerical marks/grades such as pass/fail, pass/no pass, credit/no credit, and satisfactory/unsatisfactory marks also may be used. A mark/grade of "W" shall be used to indicate a withdrawal from a course.

(3) If high school credit is awarded on a competency basis as authorized under state board of education policy WAC 180-51-050(2), the district may use either of the following options for noting the students' performance on the state standardized transcript under ((state board of education policy)) WAC ((180-57-070)) 392-415-070:

(a) Determine locally the equivalent passing mark/grade as listed under subsection (1) of this section; or

(b) Designate "pass" or "fail" or "no pass" in the appropriate manner on the transcript.

**AMENDATORY SECTION** (Amending WSR 03-04-055, filed 1/29/03, effective 3/1/03)

**WAC 180-57-055 Definition—Grade point average.**

(1) Each student's "grade point average" shall be the sum of the point values, as defined in WAC ((180-57-050)) 392-415-050, of all the marks/grades received for all courses attempted, divided by the sum of the credits for all courses attempted.

(2) The grade point value shall be rounded by multiplying the numerical value of the mark/grade earned by the number of credits assigned to the course.

(3) Grade point averages shall be rounded to the third decimal place and reported for each trimester/semester or other term and for the cumulative credits earned for all courses attempted in high school.

(4) All marks/grades for all courses taken shall be included in the calculation of grade point averages except for:

(a) Nonnumerical marks/grades shall be excluded from the calculation of grade point averages; and

(b) Only the highest mark/grade earned for a class/course taken more than once to improve a mark/grade shall be included in the calculation of grade point averages.

This exception shall not apply to recurring courses. Recurring courses are not considered repeated courses taken for the purpose of improving a mark/grade. Recurring courses are those taken by a student to further develop their understanding and skills in the subject (e.g., journalism, advanced art or drama, concert band, etc.), or is taken by the student more than once to satisfy different credit requirements (e.g., advanced drama taken three times to meet an elective requirement, an art requirement, and the occupational education requirement).

(c) Credits attempted for courses taken more than once to improve a grade/mark may count only once toward the number of credits required for graduation.

(d) Credits attempted for courses taken more than once to improve a grade may count toward the number of credits required for graduation on the condition that the letter grades earned for all attempts are included in the calculation of the

student's grade point average. Districts and schools shall not convert letter grades to nonnumerical grades/marks for the purpose of this subsection.

**AMENDATORY SECTION** (Amending Order 18-84, filed 12/10/84)

**WAC 180-57-065 School of record.** The school of record shall be that school in which the student was most recently enrolled or is currently enrolled whichever is applicable. The school of record shall be responsible for incorporating into the student's standardized transcript the information specified in WAC ((180-57-070(8))) 392-415-070 from all previous high schools in which the student was enrolled.

**AMENDATORY SECTION** (Amending WSR 05-19-106, filed 9/20/05, effective 10/21/05)

**WAC 180-57-070 Mandatory high school transcript contents—Items—Timelines.** (1)(a) The standardized high school transcript shall contain only the information listed in subsection (2) of this section in order to meet the statutory requirements under RCW ((28A.305.220)) 28A.230.125 for a statewide standardized transcript.

(b) Any other information the district or school may desire to include may be stapled to the transcript or otherwise provided with the transcript. Information that is not listed below shall not be included on the state standardized transcript:

(2)(a) Authorized and required transcript information effective now:

(i) The student's legal name (last name, first name, and middle name(s) or middle initial(s)), and other or former names used;

(ii) The name(s) of parent(s) or guardian(s);

(iii) The student's birthdate (mm/dd/yyyy);

(iv) The student's school district identification number (if applicable);

(v) The school name, address, phone number, and name of the school district issuing the transcript;

(vi) A list of previous schools attended where credit was attempted (school name, city, state, and month and year of entrance and exit);

(vii) The student's academic history for all high school level courses attempted, including courses taken under RCW 28A.230.090(4) and including those courses where a student has withdrawn, and listed by report period for the grade level (month and year), course code and description, marks/grades earned as defined in WAC ((180-57-050)) 392-415-050 (a mark/grade of "W" will be used to indicate a withdrawal from a course), credits attempted and earned as defined in WAC ((180-57-040)) 392-415-040, grade point average as defined in WAC ((180-57-055)) 392-415-055, and a report period and cumulative summary of the student's high school level academic history.

(viii) Credits attempted for courses taken more than once to improve a grade/mark may count only once toward the number of credits required for graduation, except that credits attempted for courses taken more than once to improve a grade may count toward the number of credits required for graduation on the condition that the letter grades earned for

all attempts are included in the calculation of the student's grade point average. For the purpose of this subsection, districts and schools shall not convert letter grades to grades/marks not used in the grade point average calculation.

(b) Authorized and required additional transcript information ((~~effective beginning with the graduating class of 2006~~)):

(i)) in effect for students who first entered ninth grade in the 2002-03 school year. The following courses, for which college credit can be earned, shall be designated on the transcript with the designation coding indicated. Courses completed and credits earned through running start shall be noted with an "R" designation. Courses completed and credits earned through advanced placement shall be noted with an "A" designation. Courses completed and credits earned through college in the high school shall be noted with a "C" designation. Courses completed and credits earned through an international baccalaureate program shall be noted with an "I" designation. Courses completed which earn college credit through techprep and/or the corresponding credits or certification earned shall be noted with a "T" designation. Courses that meet or satisfy higher education coordinating board core course requirements shall be noted with a "B" designation. Courses completed and credits earned through an honors option shall be noted with an "H" designation((;

(ii)(A) Notation of the student's actual highest scale score and level achieved for each content area on the Washington assessment of student learning (noting month and year);

(B) Notation of "no score" if the Washington assessment of student learning was not taken;

(C) Notation of the student's actual highest level achieved on the Washington alternate assessment system (WAAS) that has been taken by a student eligible to take the WAAS (noting month and year);))

(c) Authorized and required additional transcript information ((~~effective beginning with the graduating class of 2008~~) in effect beginning with students who first entered ninth grade in the 2004-05 school year:

(i) Notation that the high school and beyond plan graduation requirement was met ((noting month and year)) or not met by the student;

(ii) Notation that the culminating project graduation requirement was met ((noting month and year)) or not met by the student; and

(iii) If applicable, notation that the certificate of academic achievement graduation requirement was met ((noting month and year)) or not met by the student ((in one of the following ways:

(A) Based on the student's actual highest scale score and level achieved for each content area of the Washington assessment of student learning;

A "scholar designation" shall be noted on the transcript when a student achieves level four on each content area on the Washington assessment of student learning on the first attempt at taking each content area assessment.

(B) Based in whole or in part on the student's results on an alternative assessment approved by the legislature under section 101(7), chapter 19, Laws of 2004, including the stu-

dent's actual highest earned performance rating on the alternate assessment (noting month and year);

((C)); and

(iv) If applicable, notation that the certificate of individual achievement graduation requirement was met ((noting month and year)) or not met by the student ((based on the student's results on an assessment of the objectives in the student's individual education plan using the Washington alternate assessment system (WAAS))).

(3) Each issuance of the transcript shall include a report date (mm/dd/yyyy), graduation date (noting month and year), end of transcript record (signifying no more authorized data), office of superintendent of public instruction (OSPI) transcript form version number ('x' of 'y').

(4) The signature of the authorized school official (name, title, and date) and seal of the district, if available. The signature of the authorized school official may be affixed electronically, subject to a written district policy that addresses signature security and assures that the authorized school official acknowledges, in writing, that affixing their signature electronically to the transcript is a legal and binding action.

#### AMENDATORY SECTION (Amending Order 18-84, filed 12/10/84)

##### **WAC 180-57-110 Standardized transcript forms.**

The superintendent of public instruction shall make available to school districts standardized transcript forms that include the content specified in WAC ((180-57-070)) 392-415-070.

#### NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
180-57-005	392-415-005
180-57-010	392-415-010
180-57-020	392-415-020
180-57-030	392-415-030
180-57-040	392-415-040
180-57-050	392-415-050
180-57-055	392-415-055
180-57-060	392-415-060
180-57-065	392-415-065
180-57-070	392-415-070
180-57-080	392-415-080
180-57-090	392-415-090
180-57-100	392-415-100
180-57-110	392-415-110

**WSR 06-23-048****PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed November 7, 2006, 4:33 p.m., effective December 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to amend WAC 468-510-010 High occupancy vehicles, to incorporate fire department vehicles.

Citation of Existing Rules Affected by this Order: Amending WAC 468-510-010.

Statutory Authority for Adoption: RCW 47.52.025  
Additional powers, controlling use of limited access facilities—High.

Adopted under notice filed as WSR 06-19-070 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 1, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2006.

John F. Conrad  
Assistant Secretary  
Engineering and Field Operations

**AMENDATORY SECTION (Amending WSR 03-20-083, filed 9/30/03, effective 10/31/03)****WAC 468-510-010 High occupancy vehicles (HOVs).**

Pursuant to RCW 46.61.165 and 47.52.025, the department has reserved portions of interstate highways, state highways, and ramps, as HOV lanes for the exclusive use of public transportation vehicles or private motor vehicles with the number of occupants specified on signs. Motor vehicles authorized to use HOV lanes are:

(1) Rubber tired municipal transit vehicles conforming to RCW 46.04.355.

(2) Buses with a carrying capacity of sixteen or more persons, including the operator.

(3) Motorcycles conforming to RCW 46.04.330.

(4) Recreational vehicles with the number of occupants specified on signs.

(5) Official marked law enforcement and fire department vehicles equipped with emergency lights and siren, ((issued by a state, local or county law enforcement agency and)) operated by an on-duty state patrol, local, or county law enforcement personnel, or on-duty local, county, or special district fire department personnel.

(6) All other vehicles with the number of occupants specified on signs, except that trucks in excess of 10,000 lb. G.V.W. are prohibited from the use of HOV lanes regardless of the number of occupants. Tow trucks that would be otherwise prohibited because of weight or number of occupants may use HOV lanes when en route to an emergency on a specific roadway or roadside.

**WSR 06-23-058****PERMANENT RULES****UTILITIES AND TRANSPORTATION COMMISSION**

[Docket TC-060177, General Order No. R-539—Filed November 8, 2006, 1:58 p.m., effective December 9, 2006]

In the matter of amending WAC 480-30-306, relating to auto passenger transportation tariffs and time schedules, one calendar day notice of fare reductions.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 06-16-135, filed with the code reviser on August 2, 2006. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).**3 DATE OF ADOPTION:** The commission adopts this rule on the date that this order is entered.**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**6 REFERENCE TO AFFECTED RULES:** This order amends the following section of the Washington Administrative Code: Amending WAC 480-30-306 Tariffs and time schedules, one calendar day notice to the commission.**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on February 15, 2006, at WSR 06-05-114.

8 The statement advised interested persons that the commission was considering entering a rule making to propose rules in chapter 480-30 WAC relating to rates (fares) and rate making for passenger transportation companies regulated under chapter 81.68 RCW, and consider whether the commission should adopt rules and/or recommend statutory changes to the legislature. The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), the commission's list of all auto transportation companies, persons interested in transportation issues, as well as attorneys representing these companies, and by posting all information on the commission's web site at [www.wutc.wa.gov/060177](http://www.wutc.wa.gov/060177).

9 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** SeaTac Shuttle, LLC, Washington state department of transportation (WSDOT), and Bremerton-Kitsap Airporter, Inc., submitted written comments during the inquiry phase.

10 The commission held a rule-making workshop on April 27, 2006, June 1, 2006, and June 16, 2006. The following companies and organizations participated in one or more of the stakeholder workshops: Mike Lauver and John Solin, SeaTac Shuttle; Dick Asche and Jim Sells, Bremerton-Kitsap Airporter; Richard Johnson and Larry Wickkiser, Airporter Shuttle; James and Shirley Fricke, Capital Aeroporter; John Rowley, Jimy Sherrell, Steve Salins and Connie Jones, Shuttle Express; Dan Wayne, WSDOT; Fred Fravel, consultant to WSDOT; Peg Motley, Wheatland Express; Andy Frank, Port of Seattle; David Beagle, Evergreen Trails; David Rice, Miller Nash LLP; and Harum Tolbert, Department of Licensing.

11 On July 17, 2006, Chairman Mark Sidran sent a letter to all interested persons stating that "making a finding of effective competition within the transportation market is an important precursor to being more flexible in our approach to approving fares." In addition, the letter states that the commission has decided to pursue legislation to give the commission the flexibility needed to tailor entry and fare-setting standards to the market conditions within specific geographic areas. The commission therefore does not at this time consider some proposed rule changes discussed in this docket.

12 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on August 2, 2006, at WSR 06-16-135. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 06-16-135 at 1:30 p.m., Wednesday, September 13, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

13 **WRITTEN COMMENTS:** The commission received written comments from SeaTac Shuttle, LLC and Bremerton-Kitsap Airporter, Inc., regarding its legislation proposal, however, there were no comments received regarding the specific rule proposal.

14 The commission received a motion from SeaTac Shuttle on September 13, 2006, asking that the commission postpone the adoption hearing for ninety days to give staff

additional time to consider comments regarding rate making (fare) methodologies. The commission declines to extend the schedule. The agency's adjudicative rules do not apply to rule-making proceedings. As noted above, the agency will suggest legislative changes to promote flexibility with fares. Further review of methodologies is not necessary at this time. After extensive discussion among commenters, we believe that this approach is adequate for current regulatory purposes.

**15 RULE-MAKING HEARING:** The commission considered the proposed rule for adoption at a rule-making hearing on Wednesday, September 13, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from John Solin on behalf of Whidbey SeaTac Shuttle, LLC.

**16 COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR 06-16-135.

**17 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-30-306 should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

#### ORDER

##### 18 THE COMMISSION ORDERS:

19 (1) The commission amends WAC 480-30-306 to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

20 (2) This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, November 7, 2006.

Washington State Utilities and Transportation Commission

Mark H. Sidran, Chairman  
Patrick J. Oshie, Commissioner  
Philip B. Jones, Commissioner

**AMENDATORY SECTION** (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-306 Tariffs and time schedules, ((seven)) one calendar day notice to the commission.** A company must provide at least ((seven)) one calendar ((days')) day's notice to the commission for filings whose only purpose is to implement decreases in rates.

**WSR 06-23-066  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed November 9, 2006, 10:51 a.m., effective December 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: RCW 82.32.080 requires that certain taxpayers remit payment of their combined excise tax return liability via "electronic funds transfer" (EFT). RCW 82.32.085 requires that the transfer be completed so that the state receives collectible funds on or before the next banking day following the tax return due date. WAC 458-20-22802 Electronic funds transfer (Rule 22802) explains the EFT process.

The rule currently explains that an EFT is due on or before 5:00 p.m., Pacific time, on the banking day following the tax return due date. Chapter 256, Laws of 2006, (HB 2671), provides that if a taxpayer uses the automated clearinghouse (ACH) debit procedure for an EFT, the payment will be deemed to have been received timely if the taxpayer initiates the transfer on or before 11:59 p.m. Pacific time on the return due date with a payment effective date on or before the next banking day after the due date. The department amended Rule 22802 to recognize this change. Minor formatting and editing changes were also made to provide information in a more useful manner.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-22802 Electronic funds transfer.

Statutory Authority for Adoption: RCW 82.32.085, 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 06-18-091 on September 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 9, 2006.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

**AMENDATORY SECTION** (Amending WSR 01-07-017, filed 3/13/01, effective 4/13/01)

**WAC 458-20-22802 Electronic funds transfer.** (1)

**Introduction.** Certain taxpayers are required to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). RCW 82.32.080. Taxpayers who are not required to pay by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment. ((~~EFT merely changes the method of payment and no other tax return procedures or requirements are changed.~~)) Taxpayers who are either required or voluntarily choose to pay their excise tax returns by EFT must furnish the department with the necessary information, as described in subsection (9) of this ((rule)) section.

(2) **Definitions.** For the purposes of this section, the following terms will apply:

(a) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(c) "ACH debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

(d) "ACH credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(e) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(f) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(g) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(h) "Service access key" means a unique code that allows an ACH debit transaction to occur.

(3) **Taxpayers required to pay by EFT.** Taxpayers who have taxes due of \$240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is required to pay by EFT, the department will notify that taxpayer. The notification will be made

at least three months prior to the date that the first EFT payment is required.

The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.

(4) **Taxes covered.** The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, if the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT or the refund will be issued as a warrant (check).

(6) **EFT methods.** Taxpayers required to pay by EFT must do so through the use of the ACH debit or ACH credit methods. All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department. In an emergency, the taxpayer should contact the department for alternative methods of payment. Contact information will be included in the notification materials sent to all EFT remitters.

(7) **Due date of EFT payment.** The EFT payment is due on or before the banking day following the tax return due date. An EFT payment made using the ACH credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date. An EFT payment made using the ACH debit method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the EFT return due date, and the effective date for that payment is on or before the next banking day following the tax return due date. The ACH system, either ACH debit or ACH credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

(a) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.

(b) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. EFT must be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an

ACH debit user, the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th.

(8) **Coordinating return and payment.** The filed return and the EFT payment will be coordinated by the department. A return will be considered timely filed only if it is received by the department on or before the due date. If the return is sent by United States mail, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. In addition, the EFT payment must be received by the next banking day after the tax return due date. If both events occur, there is timely filing and payment and no penalties apply.

(9) **Form and contents of EFT.** The form and content of EFT will be as follows:

(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.

(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.

(c) If the taxpayer is not a taxpayer that is required to pay by EFT, and wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.

(10) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) An ACH debit transaction may be proved by use of the verification number received from the department's bank that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ACH credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD + record showing the department's bank and account number, plus confirmation that the transaction has been settled will constitute proof of payment.

(c) Taxpayers using any other electronic payment method are responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution that the transaction was settled.

(11) **Correcting errors.** Errors in the EFT process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an

error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(12) **Penalties.** There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for the payment to be timely. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

(a) In an ACH debit transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no penalties will apply with respect to those funds authorized.

(b) In an ACH credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD + record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no penalties will apply as to those funds authorized if the transaction is not completed.

(c) With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction and the taxpayer is primarily responsible for the accuracy of this transaction. The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance. If the taxpayer can make this showing, then no penalties will apply as to those funds authorized if the transaction is not completed.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 9, 2006.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

**AMENDATORY SECTION** (Amending WSR 05-02-009, filed 12/27/04, effective 1/27/05)

**WAC 458-20-255 Carbonated beverage syrup tax.**

(1) **Introduction.** This ((rule)) section explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide((—sueh as)). Examples include soft drinks, mineral ((or carbonated)) waters, seltzers, and fruit juices, ((or)) if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coin-

**WSR 06-23-067**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed November 9, 2006, 10:52 a.m., effective December 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-255 Carbonated beverage syrup tax, explains the carbonated beverage syrup tax as imposed by chapter 82.64 RCW. The carbonated beverage syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages. The rule has been amended to reflect chapter 245, Laws of 2006 (SSB 6533), which provides a business and occupation tax credit. This credit is effective, to buyers using the syrup to make carbonated beverages, as of July 1, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-255 Carbonated beverage syrup tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.64 RCW.

Adopted under notice filed as WSR 06-18-092 on September 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

cides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

**(b) What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at:

Taxpayer Information and Education  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this (~~rule~~) section for information about an exemption or credit that may be applicable to such sales.

**(4) Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state. **(a) Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this (~~rule~~) section, the buyer is not obligated to pay or report the syrup tax to the department.

**(b) Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this (~~rule~~) section, the buyer is not obligated to pay or report the syrup tax to the department.

**(5) Exemptions:** This subsection provides information on exemptions from the syrup tax.

**(a) Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

**(i)** All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a

statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

**(ii)** Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

**(iii)** A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

**(iv)** The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

**(v) Example.** Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this (~~rule~~) section). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

**(b) Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

**(i) Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

**(A)** From the department's internet web site at <http://dor.wa.gov>;

**(B)** By facsimile by calling Fast Fax at ((4))360((4))\_705-6705 or ((4))800((4))\_647-7706 (using menu options); or

**(C)** By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

**(ii)** The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no

obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in subsection (5)(b)(i) of this (~~rule~~) section. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt.

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked carbonated beverage within a specific geographic territory is exempt.

(6) ~~((Credit for syrup tax paid to another state.))~~  
**Syrup tax credits.**

(a) **B&O tax credit for syrup tax paid.** Chapter 245, Laws of 2006 (SSB 6533) provided a B&O tax credit effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer is equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit is fifty percent. From July 1, 2008, through June 30, 2009, the credit is seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in

this state other than the syrup tax imposed by chapter 82.64 RCW.

((+)) (i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

((+)) (ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

((+)) (A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

((+)) (B) Measured by the volume of the syrup.

((+)) (iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

**WSR 06-23-073**  
**PERMANENT RULES**  
**SOUTHWEST CLEAN**  
**AIR AGENCY**

[Filed November 13, 2006, 9:07 a.m., effective December 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: SWCAA 400-030 Definitions. This is an existing section that contains the definitions of words and phrases used throughout SWCAA 400. The proposed revision expands the definition of "new source" to specifically include the installation or construction of an "emission unit." This change is intended to clarify and codify existing agency policy.

SWCAA 400-045 Permit Application for Nonroad Engines. This is an existing section identifying requirements for permit applications for nonroad engine projects. The proposed revision corrects an inaccurate cross sectional rule reference.

SWCAA 400-046 Application Review Process for Nonroad Engines. This is an existing section identifying requirements for the processing and approval of permit applications for nonroad engine projects. The proposed revision corrects an inaccurate cross sectional rule reference.

SWCAA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants. This is an existing section that adopts the federal standards for sources emitting hazardous air pollutants contained in 40 C.F.R. Parts 61, 63 and 65 by reference (NESHAPS/MACT) as requirements for sources in SWCAA jurisdiction for local implementation and enforcement. The proposed changes update adoption reference dates and incorporate new federal regulations contained in 40 C.F.R., Parts 61, 63 and 65.

**SWCAA 400-101 Emission Units Exempt from Registration Requirements.** This is an existing section identifying those sources that are exempt from the registration and new source review requirements of SWCAA 400-100 and SWCAA 400-110. The proposed changes clarify the applicability language of the exemption section.

**SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area.** This is an existing section identifying the requirements for new or modified sources in a maintenance plan area. The proposed revision significantly reformats this section to incorporate updated requirements consistent with the forthcoming ozone maintenance plan for the Portland/Vancouver area. This action is needed to support adoption of the ozone maintenance plan.

**SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas.** This is an existing section identifying the new source review requirements for new or modified sources in attainment areas. The proposed revision incorporates updated language regarding requirements for sources that impact a maintenance area. The changes are intended to support the forthcoming ozone maintenance plan for the Portland/Vancouver area. This action is needed to support adoption of the ozone maintenance plan.

**SWCAA 400-115 Standards of Performance for New Sources.** This is an existing section that adopts by reference the New Source Performance Standards (NSPS) contained in 40 C.F.R. Part 60 for identified sources categories. The proposed changes update adoption reference dates and incorporate new federal regulations contained in 40 C.F.R., Part 60.

**SWCAA 400-141 Prevention of Significant Deterioration (PSD).** This is an existing section describing the requirements for those sources that would be subject to the federal PSD permitting requirements and provides reference to the appropriate federal regulations. The proposed revisions update the adoption by reference rule citations to match the current format of the equivalent sections located in chapter 173-400 WAC.

**SWCAA 400-171 Public Involvement.** This is an existing section identifying the requirements for public notice of agency actions, and the process by which public involvement is to be administered. The proposed revision removes minor permit modifications from the list of agency actions that require a mandatory public comment period. This action is intended to streamline public involvement requirements for minor modifications.

**SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques.** This is an existing section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum allowable stack height is to be determined. The proposed revision establishes a presumptive requirement for vertical exhaust stack orientation. This action codifies elements of the agency's existing permitting policy.

**Citation of Existing Rules Affected by this Order:** Amending SWCAA 400-030, 400-045, 400-046, 400-075, 400-101, 400-111, 400-113, 400-115, 400-141, 400-171, and 400-200.

**Statutory Authority for Adoption:** RCW 70.94.141.

Adopted under notice filed as WSR 06-17-052 on August 9, 2006.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted at Request of a Nongovernmental Entity:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted on the Agency's Own Initiative:** New 0, Amended 11, Repealed 0.

**Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures:** New 0, Amended 11, Repealed 0.

**Number of Sections Adopted Using Negotiated Rule Making:** New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 11, Repealed 0.

**Date Adopted:** November 2, 2006.

Robert D. Elliott  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-01 issue of the Register.

## WSR 06-23-078 PERMANENT RULES DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed November 13, 2006, 2:14 p.m., effective December 14, 2006]

**Effective Date of Rule:** Thirty-one days after filing.

**Purpose:** This rule will create a new chapter in Title 246 WAC and will adopt uniform standards for the use of automated drug distribution devices for facilities that choose to use them. In addition, the rules include current board of pharmacy requirements for drug storage, security, and accountability. It also recognizes the automated device as an appropriate storage site for controlled substances.

**Statutory Authority for Adoption:** RCW 18.64.005.

Adopted under notice filed as WSR 06-10-082 [06-11-163] on May 3, 2006 [May 24, 2006].

**Changes Other than Editing from Proposed to Adopted Version:** Changes were made to proposed rule to include all health care facilities in the definition, to expand the record-keeping requirements to account for drugs leaving and returning to the device, and to allow other DEA-approved methods of drug accountability to reduce staff time and errors.

A final cost-benefit analysis is available by contacting Tim S. Fuller, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4827, fax (360) 586-4359, e-mail [tim.fuller@doh.wa.gov](mailto:tim.fuller@doh.wa.gov).

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: August 31, 2006.

Lisa Salmi  
for Asaad Awan, Chair  
Board of Pharmacy

### Chapter 246-872 WAC

## AUTOMATED DRUG DISTRIBUTION DEVICES

### NEW SECTION

**WAC 246-872-010 Purpose.** The purpose of this chapter is to define the requirements for automated drug distribution devices in licensed pharmacies and healthcare facilities as defined in RCW 70.38.025(6) and medical facilities as defined in RCW 70.40.020(7) that choose to use them. The requirements for automated drug distribution devices provide drug security to protect public health and safety and provides access to medications for quality care. The chapter defines appropriate medication security, accountability, device performance, and patient confidentiality. Facilities with automated drug distribution devices must obtain board of pharmacy approval for the use of the devices.

### NEW SECTION

**WAC 246-872-020 What definitions do I need to know to understand these rules?** (1) "Automated drug distribution devices" means automated equipment used for remote storage and distribution of medication for use in patient care. The system is supported by an electronic data base.

(2) "Information access" means entry into a recordkeeping component of the automated drug distribution device, by electronic or other means, to add, update, or retrieve any patient record, medication record, or other data.

(3) "Medication access" means the physical entry into any component of the automated drug distribution devices to stock, inventory, remove medications, or repair the device.

### NEW SECTION

**WAC 246-872-030 What are the pharmacy's responsibilities?** Each facility using drug distribution devices must designate a registered pharmacist responsible for the oversight of the use of these devices. The responsibilities of this pharmacist are to ensure:

(1) Policies and procedures are in place for the safe use of patient medications that are removed from the devices, prior to pharmacist review of the prescriber's order.

(2) Conduct of quarterly audits of compliance with policies and procedures.

(3) Approval of the medication inventory to be stocked in the automated drug distribution devices.

(4) The checking and stocking of medications in the automated drug distribution devices is reserved to a pharmacist, pharmacy intern, or a pharmacy technician.

(a) A pharmacy technician checking the accuracy of medications to be refilled into automated drug distribution devices must have met the criteria for specialized functions in WAC 246-901-035 and have documentation of the training on file in the pharmacy.

(b) The board may approve electronic bar code checking, or other approved technology, in place of manual double-checking of the medications stocked in the automated drug distribution devices.

(5) Ensure the security of medications in automated drug distribution devices by:

(a) Limiting access to licensed health personnel consistent with the patient care services identified within their scope of practice;

(b) Using safeguards to prevent unauthorized access to the devices, including termination of access at the end of employment;

(c) Monitoring controlled substance usage and taking appropriate action as warranted; and

(d) Working in cooperation with nursing administration to maintain an ongoing medication discrepancy resolution and monitoring process.

(6) A process is in place for all staff using the automated drug distribution devices to receive adequate training.

(7) Pharmacist participation in the facility automated drug distribution devices system quality assurance and performance improvement program.

### NEW SECTION

**WAC 246-872-040 What are the responsibilities of the facility in the use of automated drug distribution devices?** The licensed health care facility must maintain readily available policies and procedures for the use of automated drug distribution devices that address:

(1) Type of equipment, components, and locations.

(2) Medication and information access.

(a) The automated drug distribution devices must have a system in place to record all medication removal, waste, and returns including date and time, identity of user, patient name, complete description of medication, quantity, and witness signature or verification, if required;

(b) The record of medications filled, inventoried, or stocked including identification of the person accessing the automated drug distribution devices shall be readily retrievable and maintained by authorized personnel;

(c) Verification that a patient's information in the automated drug distribution device matches the information in facility records; and

(d) The records for patients discharged from the facility must be removed from the automated drug distribution devices data base within twelve hours.

(3) Medication management.

(a) All medications in the automated drug distribution devices must be packaged and labeled in compliance with state and federal laws;

(b) All controlled substances activities must comply with requirements of state and federal laws. The responsible pharmacist must have a system in place to verify the accuracy of controlled substance counts. Once in place, the counting system no longer requires compliance with WAC 246-873-080 (7)(h). The process for securing and accounting for returned or wasted medication is defined.

#### NEW SECTION

**WAC 246-872-050 What are quality assurance and performance improvement requirements for the use of automated drug distribution devices?** Each facility shall establish and maintain a quality assurance and performance program that includes but is not limited to:

- (1) Accuracy of medication filling and removal;
- (2) Regular review of controlled substances discrepancies;
- (3) Use of the data collected to take action to insure quality of care and make improvements to the automated drug distribution device system;
- (4) Documentation of the outcomes of the quality assurance activities.

**WSR 06-23-083  
PERMANENT RULES  
HEALTH CARE AUTHORITY**

[Order 06-10—Filed November 13, 2006, 3:20 p.m., effective December 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the new rule [is] to use a transparent and public process in implementing new legislation. The new rules govern a new health technology assessment program established by legislation in March 2006. The program uses scientific evidence to inform an independent clinical committee that makes coverage determinations for participating state agencies that purchase health care. The rules establish procedures for the program in selecting health technologies for assessment; contracting with a technology assessment center; selecting, staffing, and management of a clinical committee; and maintaining a centralized, internet based communication tool.

Statutory Authority for Adoption: RCW 41.05.013, 41.05.160, and 70.14.090.

Adopted under notice filed as WSR 06-20-117 on October 4, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 9, 2006.

Jason Siems  
Rules Coordinator

#### **Chapter 182-55 WAC**

#### **HEALTH TECHNOLOGY ASSESSMENT PROGRAM**

#### NEW SECTION

**WAC 182-55-005 Authority and purpose.** Under RCW 70.14.080 through 70.14.140, the administrator of the Washington state health care authority is required to establish and support, and is authorized to adopt rules to govern, a health technology assessment program that uses evidence to make coverage determinations for participating state agencies that purchased health care. The health technology assessment program:

- (1) Selects health technologies for assessment;
- (2) Contracts with an evidence-based technology assessment center to produce health technology assessments;
- (3) Establishes an independent health technology committee; and
- (4) Maintains a centralized, internet based communication tool.

#### NEW SECTION

**WAC 182-55-010 Definitions.** When used in this chapter:

(1) "Administrator" means the administrator of the Washington state health care authority under chapter 41.05 RCW, as set forth in RCW 70.14.080, as amended.

(2) "Advisory group" means a group established under RCW 70.14.110 (2)(c).

(3) "Committee" means the health technology clinical committee established under RCW 70.14.090.

(4) "Coverage determination" means a determination of the circumstances, if any, under which a health technology will be included as a covered benefit in a state purchased health care program, as set forth in RCW 70.14.080, as amended.

(5) "Health technology" means medical and surgical devices and procedures, medical equipment, and diagnostic tests. Health technologies do not include prescription drugs governed by RCW 70.14.050.

(6) "Participating agency" means the department of social and health services, the state health care authority, and

the department of labor and industries, as set forth in RCW 70.14.080, as amended.

(7) "Reimbursement determination" means a determination to provide or deny reimbursement for a health technology included as a covered benefit in a specific circumstance for an individual patient who is eligible to receive health care services from the state purchased health care program making the determination, as set forth in RCW 70.14.080, as amended.

(8) "Health technology assessment" means a report produced by a contracted evidence-based technology assessment center as provided for in RCW 70.14.100(4) that is based on a systematic review of evidence of a technology's safety, efficacy, and cost-effectiveness.

#### NEW SECTION

**WAC 182-55-015 Committee purpose.** The purpose of the committee is to make coverage determinations for the participating agencies based on: A health technology assessment that reviews the scientific evidence of the relative safety, efficacy, and cost; information from any special advisory groups; and their professional knowledge and expertise.

#### NEW SECTION

**WAC 182-55-020 Committee selection.** (1) The administrator, in consultation with the participating state agencies, shall make appointments to vacant committee positions, including the appointment of a chair, from a pool of interested applicants. Interested persons will be provided an opportunity to submit applications to the administrator for consideration.

(2) When appointing committee members, the administrator will consider, in addition to the membership requirements imposed by RCW 70.14.090 and any other relevant information, the following factors: Practitioner specialty or type and use of health technologies, especially in relation to current committee member specialty or types; practice location and community knowledge; length of practice experience; knowledge of and experience with evidence-based medicine, including formal additional training in fields relevant to evidence-based medicine; medical quality assurance experience; health technology assessment review experience.

#### NEW SECTION

**WAC 182-55-025 Committee member requirements and terms.** (1) As a continuing condition of appointment, committee members:

(a) Shall not have a substantial financial conflict of interest, such as an interest in a health technology company, including the holding of stock options, or the receipt of honoraria, or consultant moneys;

(b) Must complete a conflict of interest disclosure form, update the form annually, and keep disclosure statements current;

(c) Must abide by confidentiality requirements and keep all personal medical information and proprietary information confidential; and

(d) Shall not utilize information gained as a result of committee membership outside of committee responsibilities, unless such information is publicly available. The administrator, in his/her sole discretion, may disqualify committee members if he/she determines that the committee member has violated a condition of appointment.

(2) Committee members shall be appointed to a term of three years and shall serve until a successor is appointed. A member may be reappointed for additional three-year terms for a total of nine years. One year after the end of a nine-year term, a person is eligible for appointment to one additional three-year term. Committee members serve staggered three-year terms. Of the initial members, in order to provide for staggered terms, some members may be appointed initially for less than three years. If an initial appointment is for less than twenty-four months, that period of time shall not be counted toward the limitation of years of appointment. Vacancies on the committee will be filled for the balance of the unexpired term.

(3) The appointed committee chair shall select a vice-chair from among the committee membership; ratify committee bylaws approved by the administrator; and operate the committee according to the bylaws and committee member agreements.

#### NEW SECTION

**WAC 182-55-030 Committee coverage determination process.** (1) In making a coverage determination, committee members shall review and consider the health technology assessment. The committee may also consider other information it deems relevant, including other information provided by the administrator, reports and/or testimony from an advisory group, and submissions or comments from the public.

(2) The committee shall give the greatest weight to the evidence determined, based on objective factors, to be the most valid and reliable, considering the nature and source of the evidence, the empirical characteristic of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The committee may also consider additional evidentiary valuation factors such as recency (date of information); relevance (the applicability of the information to the key questions presented or participating agency programs and clients); and bias (presence of conflict of interest or political considerations).

#### NEW SECTION

**WAC 182-55-035 Committee coverage determination.** Based on the evidence regarding safety, efficacy, and cost-effectiveness of the health technology, the committee shall:

(1) Determine the conditions, if any, under which the health technology will be included as a covered benefit in health care programs of participating agencies by deciding that:

(a) Coverage is allowed without special conditions because the evidence is sufficient to conclude that the health technology is safe, efficacious, and cost-effective for all indicated conditions; or

(b) Coverage is allowed with special conditions because the evidence is sufficient to conclude that the health technology is safe, efficacious, and cost-effective in only certain situations; or

(c) Coverage is not allowed because either the evidence is insufficient to conclude that the health technology is safe, efficacious, and cost-effective or the evidence is sufficient to conclude that the health technology is unsafe, ineffectual, or not cost-effective.

(2) Identify whether the determination is consistent with the identified Medicare decisions and expert guidelines.

(3) For decisions that are inconsistent with either the identified Medicare decisions or expert guidelines, specify the reason(s) for the decision and the evidentiary basis.

(4) For covered health technologies, specify criteria for participating agencies to use when deciding whether the health technology is medically necessary or proper and necessary treatment.

#### NEW SECTION

**WAC 182-55-040 Publication of committee determinations.** (1) The administrator shall publish final committee determinations by posting on a centralized, internet-based communication tool within ten days.

(2) Upon publication, participating agencies will implement the committee determination according to their statutory, regulatory, or contractual process unless:

(a) The determination conflicts with an applicable federal statute or regulation, or applicable state statute; or

(b) Reimbursement is provided under an agency policy regarding experimental or investigational treatment, services under a clinical investigation approved by an institutional review board, or health technologies that have a humanitarian device exemption from the federal food and drug administration.

#### NEW SECTION

**WAC 182-55-045 Advisory group.** (1) The committee chair, upon an affirmative vote of the committee members, may establish ad hoc temporary advisory group(s) if specialized expertise or input from enrollees or clients is needed to review a particular health technology or group of health technologies. The purpose or scope of the advisory group and time period shall be stated. The advisory group shall provide a report and/or testimony to the committee on the key questions identified by the committee as requiring the input of the advisory group.

(2) Advisory group membership: An ad hoc temporary advisory group shall include at least three members. Membership should reflect the diverse perspectives and/or technical expertise that drive the need for the specialized advisory group. The advisory group will generally include at least one enrollee, client, or patient; and two or more experts or specialists within the field relevant to the health technology, preferably with demonstrated experience in the use, evaluation, or research of the health technology. If substantial controversy over the health technology is present, at least one expert that is a proponent or advocate of the health technology and at least one expert that is an opponent or critic of the

health technology should be appointed. A majority of each advisory group shall have no substantial financial interest in the health technology under review.

(3) As a continuing condition of appointment, advisory group members:

(a) Must complete an advisory group member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;

(b) Must abide by confidentiality requirements and keep all personal medical information and proprietary information confidential; and

(c) Shall not utilize information gained as a result of advisory group membership outside of advisory group responsibilities, unless such information is publicly available.

#### NEW SECTION

**WAC 182-55-050 Health technology selection.** (1) Prior to selection of a health technology for review or rereview, the administrator shall consider nominations from participating agencies and recommendations from the committee. The administrator may also consider petitions from interested parties. The administrator shall make available, including publication to the centralized internet-based communication tool required at RCW 70.14.130, a petition for interested parties to request a health technology be selected for a review or rereview. Interested parties shall complete the petition and submit it to the administrator. The administrator, or designee, will provide copies of the petition to participating agencies and the committee for comment, and provide the completed petition, with any comments, to the administrator for consideration.

(2) Interested parties that have submitted a petition for the review or rereview of a health technology that was not selected by the administrator may submit the petition to the committee for review or rereview.

(3) The committee may consider petitions submitted by interested parties for review or rereview of a health technology. The committee shall apply the priority criteria set forth in RCW 70.14.100.

(4) A health technology selected by the committee shall be referred to the administrator for the next available contract for health technology assessment review.

#### NEW SECTION

**WAC 182-55-055 Health technology assessment.** (1) Upon notice of the selection of the health technology for review, the administrator shall post an invitation for interested parties to submit information relevant to the health technology for consideration by the evidence-based technology assessment center. Such information shall be required to be submitted to the administrator, or designee, no earlier than thirty days from the date of the notice.

(2) Upon notice of the selection of the health technology for review, the administrator shall request participating agencies to provide information relevant to the health technology, including data on safety, health outcome, and cost. Such information shall be required to be submitted to the adminis-

trator, or designee, no earlier than thirty days from the date of the notice.

(3) Upon notice of the selection of the health technology for review, the administrator shall require staff to identify and organize relevant federal Medicare national coverage determinations and expert treatment guidelines, and any referenced information used as the basis for such determinations and/or guidelines.

(4) The administrator shall provide all information relevant to the selected health technology to the evidence-based technology assessment center; and shall post such information, along with the key questions for review, on a centralized internet based communication tool.

(5) Upon completion of the health technology assessment by the evidence-based technology assessment center, the administrator shall provide the committee with:

(a) Final copy of the health technology assessment;

(b) Information as to whether the federal Medicare program has made a national coverage determination;

(c) A copy of identified national coverage decisions and accompanying information describing the basis for the decision;

(d) Information as to whether expert treatment guidelines exist, including those from specialty physician organizations and patient advocacy organizations; and

(e) A copy of identified guidelines and accompanying information describing the basis for the guidelines.

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 9, 2006.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-01-370 Workweek.** A regular recurring period of 168 hours beginning at a time determined by the appointing authority and continuing for seven consecutive 24-hour periods.

#### **WSR 06-23-090**

#### **PERMANENT RULES**

#### **DEPARTMENT OF PERSONNEL**

[Filed November 14, 2006, 1:40 p.m., effective December 18, 2006]

Effective Date of Rule: December 18, 2006.

Purpose: The purpose of this change is to clarify what happens when an employee who has not completed their probationary period is being reallocated upward.

Citation of Existing Rules Affected by this Order: Amending WAC 357-13-090.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-20-086 on October 3, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 9, 2006.

Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-12-088, filed 5/27/05, effective 7/1/05)

**WAC 357-13-090 How is an employee affected when his/her position is reallocated?**

This table is used to determine how an employee whose position is reallocated is affected.

Employee's position reallocated to:			
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum

## Reallocation results from:

<p>A position review requested by the employee or initiated by the employer</p>	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>⇒ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>⇒ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed <u>and he/she has already gained permanent status</u>, the employee must serve a trial service period. <u>If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</u></p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>⇒ The employee remains in the position and retains existing appointment status.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>⇒ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>⇒ The employer's layoff procedure applies.</p>
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	Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed the top step of the range as provided in WAC 357-28-115.	⇒ The employer's layoff procedure applies.	
The director implementing a new classification plan under provisions of RCW 41.06.136 or revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-125 and 357-28-130 for determining the employee's salary.		

**WSR 06-23-091****PERMANENT RULES****DEPARTMENT OF PERSONNEL**

[Filed November 14, 2006, 1:42 p.m., effective December 18, 2006]

Effective Date of Rule: December 18, 2006.

Purpose: The purpose of this change is to remove the requirement that recognition leave must be used before the employee's vacation leave.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-565.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-20-087 on October 3, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 9, 2006.

Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

**WAC 357-31-565 May employers grant paid leave for purposes of recognition?** Employers who have received performance management confirmation may grant employees up to five days of paid leave within a twelve-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within twelve months of the leave being granted; and

(3) ~~((Must be used before the employee uses vacation leave.))~~

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 06-23-092****PERMANENT RULES****DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed November 14, 2006, 2:03 p.m., effective January 1, 2007]

Effective Date of Rule: January 1, 2007.

Purpose: This rule-making order will adopt changes to chapter 296-17 WAC, General reporting rules, classifications, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance. The order will create two new classifications for the horse racing industry at their request and amend two existing classifications.

New classifications created to become effective January 1, 2007: WAC 296-17-73201, create new classification for exercise riders - major tracks and 296-17-73203, create new classification for exercise riders - fair meets or bush tracks.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-73105 and 296-17-73107.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Adopted under notice filed as WSR 06-18-081 on September 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 14, 2006.

Judy Schurke  
Acting Director

**AMENDATORY SECTION** (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

#### WAC 296-17-73105 Classification 6614.

**6614-00 Parimutuel horse racing: All other employees, N.O.C. - major tracks**

*(to be assigned only by the horse racing underwriter)*

Applies to licensed employees of licensed horse trainers and/or horse owners who conduct business at a major parimutuel horse racing track ((These tracks are currently Yakima Meadows in Yakima, Playfair in Spokane and)) such as Emerald Downs in Auburn. This classification applies to on and off track employees such as assistant trainers((,)) and pony riders ((and exercise riders. Jockeys are considered exercise riders when employed by a trainer and/or owner at a time other than during a scheduled race meet)). The dates of a race meet are set for each track by the Washington horse racing commission. Coverage provided in this classification is funded by premiums collected at the time of licensing. Trainers premiums are collected on a per license basis.

This classification excludes licensed grooms working at major tracks who are to be reported separately in classification 6615; unlicensed employees who work only on a farm or ranch who are to be reported separately in classification 7302; ((and)) assistant trainers((,)) and pony riders ((and exercise riders)) working at a fair or bush track who are to be reported separately in classification 6616; exercise riders working at a major track who are to be reported in classification 6622 and exercise riders at a fair or bush track who are to be reported in classification 6623.

**Special note:** All employees working at a major track must be licensed by the Washington state horse racing commission.

**AMENDATORY SECTION** (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

#### WAC 296-17-73107 Classification 6616.

**6616-00 Parimutuel horse racing: All other employees, N.O.C. - fair meets or bush tracks**

*(to be assigned only by the horse racing underwriter)*

Applies to licensed employees of licensed horse trainers and/or horse owners who conduct business at a fair meet or bush track. This classification applies to on or off track employees such as assistant trainers((,)) and pony riders((, and exercise riders. Jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during a scheduled race meet)). The dates of a race meet

are set for each track by the Washington state horse racing commission. Coverage provided in this classification is funded by premiums collected at the time of licensing. Trainer premiums are collected on a per license basis.

This classification excludes assistant trainers((,)) and pony riders ((and exercise riders)) working at a major track who are to be reported separately in classification 6614; grooms working at a major track who are to be reported separately in classification 6615 ((and)), grooms working at a fair or bush track who are to be reported separately in classification 6617; exercise riders working at a major track who are to be reported in classification 6622 and exercise riders at a fair or bush track who are to be reported in classification 6623.

**Special note:** All employees working at a fair or bush track must be licensed by the Washington state horse racing commission.

#### NEW SECTION

#### WAC 296-17-73201 Classification 6622.

**6622-00 Parimutuel horse racing: Exercise riders - major tracks**

*(to be assigned only by the horse racing underwriter)*

Applies to licensed employees of licensed horse trainers and/or horse owners who conduct business at a major parimutuel horse racing track such as Emerald Downs. This classification applies to on and off track employment of exercise riders. Jockeys are considered exercise riders when employed by a trainer and/or owner at a time other than during a scheduled race meet. The dates of a race meet are set for each track by the Washington state horse racing commission. Coverage provided in this classification is funded by premiums collected at the time of licensing. Trainers' premiums are collected on a per license basis.

This classification excludes licensed grooms working at major tracks who are to be reported separately in classification 6615; licensed grooms working at fair or bush tracks who are to be reported in 6617; unlicensed employees who work only on a farm or ranch who are to be reported separately in classification 7302; assistant trainers and pony riders working at a major track who are to be reported separately in classification 6614; assistant trainers and pony riders working at a fair or bush track who are to be reported in 6616; and exercise riders at a fair or bush track who are to be reported in 6623.

**Special note:** All employees working at a major track must be licensed by the Washington state horse racing commission.

#### NEW SECTION

#### WAC 296-17-73203 Classification 6623.

**6623-00 Parimutuel horse racing: Exercise riders - fair meets or bush tracks**

*(to be assigned only by the horse racing underwriter)*

Applies to licensed employees of licensed horse trainers and/or horse owners who conduct business at a fair meet or bush track. This classification applies to on or off track

employment of exercise riders. Jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during a scheduled race meet. The dates of a race meet are set for each track by the Washington state horse racing commission. Coverage provided in this classification is funded by premiums collected at the time of licensing. Trainer premiums are collected on a per license basis.

This classification excludes assistant trainers and pony riders working at a major track who are to be reported separately in classification 6614; assistant trainers and pony riders working at a fair or bush track who are to be reported in 6616; grooms working at a major track who are to be reported separately in classification 6615; grooms working at a fair or bush track who are to be reported separately in classification 6617; and exercise riders working at a major track who are to be reported in 6622.

**Special note:** All employees working at a fair or bush track must be licensed by the Washington state horse racing commission.

**WSR 06-23-094**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed November 15, 2006, 1:28 p.m., effective December 16, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify and update rules regarding election administration, including rules related to initiatives and referenda, ballot procedures, and screening the voter registration rolls for felons.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-208-080 and 434-208-090; and amending WAC 434-208-060, 434-208-070, 434-215-050, 434-250-020, 434-250-040, 434-250-060, 434-250-100, 434-253-010, 434-253-045, 434-261-005, 434-261-120, 434-261-050, 434-261-102, 434-324-106, 434-324-130, 434-379-005, and 434-379-008.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 06-18-088 on September 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 18, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 15, 2006.

Steve Excell  
Assistant Secretary of State

**AMENDATORY SECTION** (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-208-060 Electronic filings ((of electronic facsimile documents))**. In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic ((facsimile)) transmissions of the following documents:

- (1) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;
- (2) Any minor party or independent candidate filing material except nominating petitions;
- (3) Lists of presidential electors selected by political parties or independent candidates;
- (4) Voted ballots, provided the voter agrees to waive the secrecy of his or her ballot;
- (5) Resolutions from cities, towns, and other districts calling for a special election;
- (6) Filling of vacancies on the ticket by a major political party;
- (7) Voter registration form.

**AMENDATORY SECTION** (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

**WAC 434-208-070 Electronic ((facsimile)) filings not accepted.** ((No filing by electronic facsimile shall be accepted where a filing fee must accompany the filing unless the person making the filing has also provided for that fee to be paid in conjunction with the electronic facsimile filing.)) (1) When a filing fee is required, acceptance of an electronic filing is conditional until the fee is received.

(2) If the original document must be signed, acceptance of an electronic filing is conditional until receipt of the original document. Except for absentee ballots, the original document must be received no later than seven calendar days after receipt of the electronic filing. If a voted ballot is submitted electronically, the ballot and the envelope bearing the original signature of the voter must be received on or before the date on which the election is certified pursuant to RCW 29A.60.190.

(3) No initiative, referendum, or recall petition signatures may be filed ((by electronic facsimile)) electronically.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 434-208-080

Electronic facsimile filings followed by original document.

WAC 434-208-090

Rejection of electronic facsimile filings.

**AMENDATORY SECTION** (Amending WSR02-09-007, filed 4/4/02, effective 4/4/02)

**WAC 434-215-050 Use of title ((or)), rank, or symbols prohibited.** No person when filing for office shall be permitted to use any title, rank, or symbol instead of, or in conjunction with, his or her name, except as may be provided by law or administrative rule.

**AMENDATORY SECTION** (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-250-020 Definitions.** As used in this chapter:

(1) "Absentee ballot" includes:

(a) An ongoing absentee ballot issued to a voter who has requested status as an ongoing absentee voter, as authorized by RCW 29A.40.040;

(b) A single absentee ballot issued to a voter who has requested an absentee ballot for a single election, as authorized by RCW 29A.40.020;

(c) A special absentee ballot issued to a voter who has indicated that he or she will be unable to vote and return a regular absentee ballot timely, as authorized by RCW 29A.40.050; and

(d) A hospital absentee ballot issued to a voter confined to a health care facility on the day of a primary or election, as authorized by RCW 29A.40.080.

(2) "Final processing" means the reading of ballots by an electronic vote tallying system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Initial processing" means all steps taken to prepare absentee ballots for tabulation, except for the reading of ballots by an electronic vote tallying system for the purpose of producing returns of votes cast. Initial processing includes, but is not limited to: Verification of the signature and postmark on the return envelope(( )); removal of the security envelope from the return envelope; removal of the ballot from the security envelope; manual inspection for damage, write-in votes, and incorrect or incomplete marks; duplication of damaged and write-in ballots; scanning and resolution of ballots on a digital scan voting system; and other preparation of ballots for final processing.

(4) "Mail ballot" means a ballot used in an election conducted by mail, as authorized by RCW 29A.48.010, 29A.48.020, or 29A.48.030. Unless specified otherwise, mail ballots must be prepared and processed in the same manner as absentee ballots.

(5) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

**AMENDATORY SECTION** (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-250-040 Instructions to voters.** (1) In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning an absentee ballot must also include:

(a) How to correct a ballot by crossing out the incorrect vote and voting the correct choice;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) How to complete and sign the affidavit on the return envelope;

((e))) (d) How to make a mark, witnessed by two other people, if unable to sign the affidavit;

((f))) (e) How to place the ballot in the security envelope and place the security envelope in the return envelope;

((e))) (f) How to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

((f))) (g) Notice that postage is required, if applicable; and

((g))) (h) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated place no later than election day, and providing the location, dates, and times for depositing the ballot as an alternative to mailing the ballot.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

**AMENDATORY SECTION** (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

**WAC 434-250-060 Service and overseas voters((—Material and postage)).** (1) Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for overseas and service voters. For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW. All absentee ballots to voters in these categories ((will)) must be sent postage-free, pursuant to the provisions of federal law, and the return envelopes must be marked as to indicate that they may be returned free of postage.

(2) A county auditor must accept a federal write-in absentee ballot, as authorized by 42 U.S.C. Sec. 1973ff, if sufficient information is provided to allow the county auditor to process the ballot.

**AMENDATORY SECTION** (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

**WAC 434-250-100 Depositing of ballots.** Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Places of deposit may be staffed or unstaffed.

(1)(a) Staffed sites must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor,

the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of the duties.

(b) Staffed deposit sites must be open from 7:00 a.m. until 8:00 p.m. on the day of the election and may be open prior to the election on dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff.

(c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

(2) Unstaffed sites may be used if the ballot drop box is either:

(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

(b) Secured and located indoors.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, ballot drop boxes must be emptied ((at exactly 8:00 p.m. to ensure that all ballots meet the 8:00 p.m. delivery deadline)) or sealed to prevent the deposit of additional ballots.

#### AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-253-010 Polling place—Activities prohibited.** The county auditor shall ensure that all precinct election officers receive instruction regarding activities that are not permitted within the polling place, including electioneering, circulation of campaign material, soliciting petition signatures, or impeding the voting process((, or get out the vote campaigns)). Whenever it is necessary to maintain order within the polling place and the surrounding environs, the inspector may, if circumstances warrant and if the means to do so are available, contact the county auditor, who shall determine the corrective action required. Such corrective action may include contacting a law enforcement agency for ((their)) assistance.

#### AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-253-045 Provisional ballots—Required information.** A provisional ballot may ((not)) only be voted on a direct recording electronic voting device if the voting

system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state. At a minimum, the following information is required to be printed on the outer provisional ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following oath with a place for the voter to sign and date:

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I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;

I am entitled to vote in this election;

I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

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Signature \_\_\_\_\_ Date \_\_\_\_\_

#### AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic ((faesimile)) image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incom-

plete marks, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" is the signature of a registered voter eligible to vote in the election as verified against the voter registration files. On an absentee ballot envelope, a mark with two witnesses is a valid signature.

**AMENDATORY SECTION** (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-261-120 Referral of questionable ballots to canvassing board.** Whenever a precinct election officer ((in a precinct where ballots are being tabulated)) or counting center personnel ((in a county where ballots are being centrally tabulated)) has a question about the validity of a ballot or the votes contained on the ballot that they are unable to resolve, the ballot shall be placed in a special ((envelope)) container marked "for canvassing board." ((The following information must be provided on the outside of the envelope: (1) Identification of the precinct from which the ballot originated; (2) The facts giving rise to the question of validity ((including, if applicable, the office or issue on the ballot which is affected by the question; (3) An identification number by which the envelope containing the ballot may be tracked)) must be noted.

If the question arises at a polling place, the precinct inspector shall ((annotate)) note the ballot on the ballot accountability ((sheet)) form in a manner similar to recording other irregularly voted ballots((, shall seal the envelope)) and shall transfer it to the elections office in ((the special envelope for irregularly voted ballots)) accordance with WAC 434-253-170.

If the question arises in the counting center, the counting center supervisor shall record the ballot on an irregularly voted ballot log sheet.

Ballots being held for determination of validity or voter's intent shall be provided the same security as regular voted ballots and shall be kept in a secure area when not being processed. ((As long as they are in the sealed envelope it is not necessary to seal them in other containers within the counting center provided they are otherwise safeguarded. Once the issue of validity has been determined, the ballots must be tabulated, if applicable, stored, and retained the same as regular voted ballots.

When the determination of validity is made, the disposition of the ballot shall be entered on the envelope and the ballot accountability sheet or the irregularly voted ballot log sheet.))

**AMENDATORY SECTION** (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

**WAC 434-261-050 Unsigned oath or mismatched signatures.** (1) If a voter neglects to sign the oath on an absentee or provisional ballot envelope, signs the oath with a mark and fails to have two witnesses attest to the signature, or signs the ballot envelope but the signature on the envelope does not match the signature on the voter registration ((file)) record, the auditor shall notify the voter ((pursuant to RCW

29A.60.165)) by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign the oath on an absentee or provisional ballot envelope, or signs the oath with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the affidavit no later than the day before certification of the primary or election; or

(b) Sign a copy of the affidavit provided by the auditor, or mark the affidavit in front of two witnesses, and return it to the auditor no later than the day before certification of the primary or election.

(3) If the signature on the oath of an absentee or provisional ballot envelope does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the new registration form becomes the signature on the voter registration record for the current election and future elections; or

(b) Sign a copy of the affidavit provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the affidavit must match the signature on the identification, and both of those signatures must match the signature on the ballot envelope. The voter must return the signed affidavit and identification to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or

(c) Sign a copy of the affidavit provided by the auditor in front of two witnesses who attest to the signature. The signature on the affidavit must match the signature on the ballot envelope. The voter must return the signed affidavit to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections.

(4) If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form. If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(5) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(6) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on

which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

**AMENDATORY SECTION** (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

**WAC 434-261-102 Resolving ballots ((tabulated)) on digital scan vote tallying systems.** In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve ballots identified as requiring resolution. A log of the resolutions must be printed and signed by the two staff.

**AMENDATORY SECTION** (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons ((and pending cancellation notifications)).** (1) Once a quarter, the secretary must perform comparisons with the ((Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies)) department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons((The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election)) who are under the legal custody of the department of corrections due to an adult felony conviction. The secretary must create a list of ((matches by confirming that)) felon voters by matching the first name, last name, (and) date of birth ((match)), and other identifying information.

(2) ((The list of matches must be compared to information provided by the office of the administrator for the courts and the elemeney board to identify felons who have received certificates of discharge or gubernatorial pardons for all felony convictions.

(3) The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge or gubernatorial pardon for all felony convictions. The seeretary must flag the voter registration record to prevent future eanellation based on these previous felony convictions.

(4) If there is no record of a certificate of discharge or gubernatorial pardon for each felony conviction) For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in ((the)) a poll book ((and must not receive)) or be mailed an absentee or mail ballot.

((5)) (3) The secretary must mail a notification letter to each felon whose status is pending cancellation. ((In addition to sending a copy of the notification letter to the auditor, the seeretary must also send notification of the voter's pending cancellation status to the auditor through the election managment system.)) The notification letter must be sent to the

felon's last known registration mailing address indicating that his or her voter registration is about to be canceled. The ((form)) letter must contain language notifying the felon that ((if the pending cancellation status is in error, the felon)) he or she may contact the auditor's office to ((reoneile the error and)) correct the information or request a hearing if the felon status is not correct or the right to vote has been restored. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. ((As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored.)) The notification letter must contain substantially the following language:

Dear . . . . . ,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled ((as outlined in the last paragraph of this letter)) or by a certificate of restoration issued by the governor.

Based on name ((and)), date of birth, and other identifying information maintained in state voter registration records and ((felony conviction)) department of corrections records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

Felon's name  
Felon's date of birth  
County of conviction  
(Date of conviction)  
Case/cause number

Your voter registration is pending cancellation. If you would like to dispute this finding, you have ((thirty)) 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing ((by contacting)). You must contact:

County auditor  
County auditor's address  
County auditor's phone number  
((County auditor's e-mail address))

You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.

If you do not contact the county elections department within 30 days to dispute ((this)) the finding ((within thirty days)), your voter registration will be canceled.

Voting before the ((rights are)) right is restored is a class C felony ((RCW 29A.84.660)). The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court ((RCW 9.94A.637));
2. A court order restoring civil right, issued by the sentencing court ((RCW 9.92.066));

3. A final ((order of)) discharge and restoration of civil rights, issued by the indeterminate sentence review board ((RCW 9.96.050)); or
4. A certificate of restoration, issued by the ((governor (RCW 9.96.020))) clemency and pardons board; or
5. A pardon, issued by the governor.

Further information about how to get the right to vote restored may be found at (([www.secstate.wa.gov/elections/restoring.aspx](http://www.secstate.wa.gov/elections/restoring.aspx))) [www.secstate.wa.gov/elections/faq.aspx](http://www.secstate.wa.gov/elections/faq.aspx).

Sincerely,

((.....)) Elections Division  
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, sufficient to prove the felony conviction by clear and convincing evidence. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibil-

ity. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation based on the same felony convictions. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

#### AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

**WAC 434-324-130 ((Contents of)) Lists of registered voters for the public.** (1) Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, the current list of registered voters at actual reproduction cost. The auditor or secretary may also provide a list of canceled voters. Auditors may combine these lists. The auditor or secretary may, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists ((may)) must contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in the form of computer printouts, microfilm duplicates, or electronic media copies of such information.

(2) Such voter registration lists ((must be used only for political)) may not be used for commercial purposes((; commercial use of this information is punishable as provided in RCW 29A.08.740)). The person making the request must be provided a copy of RCW 29A.08.740.

**AMENDATORY SECTION** (Amending WSR 05-12-116, filed 5/31/05, effective 7/1/05)

**WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents.** A person desiring to file with the secretary of state a petition to enact a proposed measure to the legislature or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, may do so by filing the following documents:

- (1) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;
- (2) A notarized affidavit that the sponsor is a legal voter and is submitting the proposed measure for filing;
- (3) A filing fee of five dollars for each measure submitted.

The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required.

**AMENDATORY SECTION** (Amending WSR 06-11-043, filed 5/10/06, effective 6/10/06)

**WAC 434-379-008 ((Signing a petition in error.))**  
Signed petitions. ((Before the deadline for filing petitions has passed, a person who believes he or she has signed an initiative or referendum petition in error may submit a letter to the secretary stating that he or she did not intend to sign the petition. This letter must be included)) (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the elections division for submission of the signed petitions to the secretary. Petitions submitted prior to or at the appointment that clearly bear insufficient signatures must be rejected pursuant to RCW 29A.72.160. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160.

((2) Signatures on initiative and referendum petitions submitted to the secretary may not be removed from the petition or eliminated from the signature count. Letters submitted to the secretary requesting the removal of one's own signature from a petition must be retained by the secretary as part of the public record for the petition. (The secretary must not physically remove the person's name from the petition or reduce the total number of signatures submitted.)))

**WSR 06-23-096**  
**PERMANENT RULES**  
**FOREST PRACTICES BOARD**

[Filed November 15, 2006, 4:47 p.m., effective December 16, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend Title 222 WAC, Forest practices rules, to eliminate the option to use default basin sizes in determining the demarcation between nonfish seasonal and on-fish perennial streams.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-030(3) and 222-16-031(4).

Statutory Authority for Adoption: RCW 76.09.040.

Other Authority: RCW 76.09.370.

Adopted under notice filed as WSR 06-17-151 on August 22, 2006.

Changes Other than Editing from Proposed to Adopted Version: The proposed version included language that referred to Forest Practices Board Manual Section 23 for guidance on identifying the uppermost point of perennial flow on nonfish perennial streams. The board did not approve Board Manual Section 23, and the adopted rule does not include that language.

A final cost-benefit analysis is available by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@wadnr.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 1, 2006.

L. S. Young  
for Victoria Christiansen  
Chair

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-16-030 Water typing system.** Until the fish habitat water type maps described below are adopted by the board, the Interim Water Typing System established in WAC 222-16-031 will continue to be used. The department in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes will classify streams, lakes and ponds. The department will prepare water type maps showing the location of Type S, F, and N (Np and Ns) Waters within the forested areas of the state. The maps will be based on a multiparameter, field-verified geographic information system (GIS) logistic regression model. The multiparameter model will be designed to identify fish habitat by using geomorphic parameters such as basin size, gradient, elevation and other indicators. The modeling process shall be designed to achieve a level of statistical accuracy of 95% in separating fish habitat streams and non-fish habitat streams. Furthermore, the demarcation of fish and nonfish habitat waters shall be equally likely to over and under estimate the presence of fish habitat. These maps shall be referred to as "fish habitat water typing maps" and shall,

when completed, be available for public inspection at region offices of the department.

Fish habitat water type maps will be updated every five years where necessary to better reflect observed, in-field conditions. Except for these periodic revisions of the maps, on-the-ground observations of fish or habitat characteristics will generally not be used to adjust mapped water types. However, if an on-site interdisciplinary team using nonlethal methods identifies fish, or finds that habitat is not accessible due to naturally occurring conditions and no fish reside above the blockage, then the water type will be immediately changed to reflect the findings of the interdisciplinary team. The finding will be documented on a water type update form provided by the department and the fish habitat water type map will be updated as soon as practicable. If a dispute arises concerning a water type the department shall make available informal conferences, as established in WAC 222-46-020 which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types.

The waters will be classified using the following criteria:

**\*(1) "Type S Water"** means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

**\*(2) "Type F Water"** means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

(a) Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Pro-

vided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

(d) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish habitat stream and accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish.

**(3) "Type Np Water"** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall. (However, for the purpose of water typing, Type Np Waters) and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. ((If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual section 23), then Type Np Waters begin at a point along the channel where the contributing basin area is:

(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);

(b) At least 52 acres in other locations in Western Washington; or

(e) At least 300 acres in Eastern Washington.))

**(4) "Type Ns Water"** means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

**\*(5)** For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at

least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps (see board manual section 23).

(g) "Intermittent streams" means those segments of streams that normally go dry.

(h) "Fish habitat" means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-16-031 Interim water typing system.** Until the fish habitat water type maps mentioned above are available, waters will be classified according to the interim water typing system described below. If a dispute arises concerning a water type, the department shall make available informal conferences, which shall include the departments of fish and wildlife, ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

For the purposes of this interim water typing system see the following table:

**Water Type Conversion Table**

Permanent Water Typing	Interim Water Typing
Type "S"	Type 1 Water
Type "F"	Type 2 and 3 Water
Type "Np"	Type 4 Water
Type "Ns"	Type 5 Water

\*(1) "**Type 1 Water**" means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

\*(2) "**Type 2 Water**" means segments of natural waters which are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of

downstream water quality. The department may allow additional harvest beyond the requirements of Type 2 Water designation provided by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the land-owner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Are within a federal, state, local or private camp-ground having more than 30 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit.

(d) Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

(e) Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish bearing stream and be accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish through a drainage with less than a 5% gradient.

\*(3) "**Type 3 Water**" means segments of natural waters which are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the board manual section 13. If fish use has not been determined:

(i) Waters having any of the following characteristics are presumed to have fish use:

(A) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater in width in Eastern Washington; and having a gradient of 16 percent or less;

(B) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater within the bankfull width in Eastern Washington, and having a gradient greater than 16 percent

and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in Western Washington or greater than 175 acres contributing basin size in Eastern Washington, based on hydrographic boundaries;

(C) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;

(D) Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

(ii) The department shall waive or modify the characteristics in (i) of this subsection where:

(A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;

(B) Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or

(C) Sufficient information about a geomorphic region is available to support a departure from the characteristics in (i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes and interested parties.

**\*(4) "Type 4 Water"** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 Waters) and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. ((If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual, section 23), then Type 4 Waters begin at a point along the channel where the contributing basin area is:

(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);

(b) At least 52 acres in other locations in Western Washington;

(e) At least 300 acres in Eastern Washington))

**\*(5) "Type 5 Waters"** means all segments of natural waters within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 Water. Type 5 Waters must be physically connected by an above-ground channel system to Type 1, 2, 3, or 4 Waters.

**\*(6)** For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps. (See board manual section 23.)

## WSR 06-23-104

### PERMANENT RULES

#### CENTRAL WASHINGTON UNIVERSITY

[Filed November 16, 2006, 10:08 a.m., effective December 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Modify existing rules to provide more information to library users and remove outdated language.

Citation of Existing Rules Affected by this Order: Amending WAC 106-168-009 and 106-168-097.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Adopted under notice filed as WSR 06-20-052 on September 28, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2006.

Elizabeth M. Street  
Executive Assistant to the  
President for Policy and Planning

**AMENDATORY SECTION** (Amending Order CWU AO 77, filed 10/6/94, effective 11/6/94)

**WAC 106-168-009 Food, beverages, smoking.** Users are expected to maintain appropriate public behavior while using the library facilities. ((Eating food or drinking beverages is not allowed in any of the areas open to public use. Smoking and other uses of tobacco are prohibited in the library.)) Library policies regarding eating food or drinking beverages and tobacco use are included in the library conduct policy available on-line at <http://www.lib.cwu.edu/info/policies/conduct.html>.

**AMENDATORY SECTION** (Amending Order CWU AO 77, filed 10/6/94, effective 11/6/94)

**WAC 106-168-097 Payment of charges.** (1) Charges may be paid at the cashier's office. Payment may be made by cash, check, or money order. Departmental purchase orders or interdepartmental funds transfers are not acceptable in payment of charges.

(2) Failure to pay charges will result in the total amount assessed being referred to ((the controller's office)) student financial services for collection. ((The controller)) Student financial services may deduct outstanding charges from salary warrants of employees, or withhold outstanding charges from damage deposits or other funds held by the university for any student. ((The controller)) Student financial services may notify the registrar to withhold permission to enroll until outstanding charges are paid, to refrain from issuing requested transcript copies or to forward the amount outstanding to a collection agency for recovery.

(3) Failure to pay charges may result in the revocation of borrowing privileges.

**WSR 06-23-105**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2006-07—Filed November 16, 2006, 1:58 p.m., effective December 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To delay one year the implementation of rules that require individual agents and solicitors licensed to sell vehicle insurance to meet the continuing education requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 284-17-220.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.150.

Adopted under notice filed as WSR 06-18-098 on September 6, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 16, 2006.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

**WAC 284-17-220 Who is required to meet continuing education (CE) requirements?** All individual resident agents, brokers and solicitors licensed to sell life, disability, property and casualty lines of insurance must meet the continuing education requirement.

Individual agents and solicitors licensed to sell vehicle insurance must meet the continuing education requirement beginning with January 1, ((2007)) 2008, renewals.

**WSR 06-23-107**  
**PERMANENT RULES**  
**CENTRAL WASHINGTON UNIVERSITY**

[Filed November 17, 2006, 9:35 a.m., effective December 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Modify existing student records policy rules to comply with FERPA regulations and current administrative practice.

Citation of Existing Rules Affected by this Order: Amending WAC 106-172-711, 106-172-721, 106-172-731, 106-172-735, 106-172-763, 106-172-765, and 106-172-772.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Other Authority: 41 C.R.F. [C.F.R.] 06-50.

Adopted under notice filed as WSR 06-20-053 on September 28, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 14, 2006.

Libby M. Street  
Executive Assistant to the President  
for Policy and Planning

**AMENDATORY SECTION** (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-711 Definitions.** The following definitions shall apply for the interpretation of these regulations:

(1) The "university" means Central Washington University as a whole, including any and all of its component departments, offices, or units.

(2) "Directory information" means the student's name, ((hometown address;)) university and permanent home address and telephone number, e-mail address, a photograph, date of birth, ((participation in officially recognized activities and sports, weight and height of members of athletic teams;)) dates of attendance, class, ((previous institutions attended;)) major field(s) of study, previous institutions attended, awards((;)) and honors (including honor roll), degrees conferred (including dates), and ((other similar information)) participation in officially recognized sports and activities, and height and weight of members of athletic teams. ((The)) Central Washington University may release directory information ((concerning a student to the public unless the student submits a signed request in writing)) in accordance with the provisions of FERPA. Students may withhold directory information by giving written notice within two weeks after the ((first day of classes for the)) beginning of fall quarter. Requests for nondisclosure must be forwarded to the office of the vice-president for student affairs and enrollment management where an appropriate notation will be ((entered in)) indicated on the student's ((computer)) file on the student information system. Students may place a nondisclosure indicator on their student record directly on the student information system. ((These requests will then be forwarded to the university relations and information office which maintains a complete file of nondisclosure requests. Authorization to withhold the information must be filed annually since the))) Requests for nondisclosure will be honored ((by the university for only one year)) unless students submit a written request to have the block on their directory information removed. Students who wish to withhold directory information after they graduate, which would include their dates of attendance and degrees conferred, must submit another written request to the vice-president for student affairs and enrollment management. Forms for making requests to withhold directory information are available in the Office of the Vice-President for Student Affairs and Enrollment Management, Bouillon Hall, Room 204, at the Ellensburg campus.

(3) "Eligible student" means any person who is officially registered at this university.

(4)(a) "Education records" mean those records which:

(i) Are directly related to a student, and include admission, academic, financial aid, student account, placement records, and

(ii) Are maintained by the university or by a party acting for the university.

(b) The term education record does not include the following:

(i) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker of the record and which are not accessible or revealed to any other person except a temporary substitute;

(ii) Records of public safety and police services which are maintained separately and solely for law enforcement officials of the same jurisdiction—provided that education records maintained by the university are not disclosed to the law enforcement unit;

(iii) Records of someone employed by the university, which are made in the normal course of business, related exclusively to the person as an employee, and are not used for any other purpose;

(iv) Records made by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional directly related to the treatment of a student, and not disclosed to anyone other than individuals providing treatment provided records can be reviewed by a physician or other appropriate professional of the student's choice.

(5) "Personally identifiable" means that the data or information includes:

(a) The name of a student, the student's parent, or other family member,

(b) The student's university and permanent home address ((of the student)),

(c) A personal identifier, such as the student's social security number or student number,

(d) A list of personal characteristics which would make the student's identity easily traceable, or

(e) Other information which would make the student's identity easily traceable.

(6) "Record" means information or data recorded in any medium including but not limited to: Handwriting, print, tapes, film, microfilm, and microfiche.

(7) "Financial aid" means a payment of funds provided to an individual which is conditioned on the individual's attendance at an educational agency or institution.

(8) "Vice-president for student affairs and enrollment management" means the vice-president for student affairs and enrollment management or the vice-president's designee.

**AMENDATORY SECTION** (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-721 Notification by educational institution.** (1) The university shall inform eligible students, annually, of the following:

(a) The types of education records and information contained therein which are maintained by the institution;

(b) The titles and addresses of official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have access;

(c) The policies and procedures of the university for reviewing and expunging those records, and for challenging the accuracy of them;

(d) the procedures for gaining access to the educational records;

(e) The cost, as approved by the board of trustees, which will be charged to the eligible student for reproducing single copies of records, provided that the cost shall not exceed the actual cost of reproducing the record;

(f) The categories of information which the university has designated as directory information.

(2) Notice of the existence of this policy and the availability of the information described in subsection (1)(a) through (f) of this section may be published in any official university print medium publication having general circulation among students. This may be a special publication for this purpose only, or included in another publication. Students may consult the office of the vice-president for student affairs and enrollment management for the information described.

#### AMENDATORY SECTION (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-731 Access to education records.** The university shall provide each student access to his/her education records except as otherwise limited according to WAC 106-172-733.

The right of access shall include:

(1) The right to inspect and review the content of education records in the presence of appropriate university personnel.

(2) The right to obtain single copies of each record, at the expense of the eligible student but not to exceed the actual cost to the university of reproducing such copies.

(3) The right to a response from the university to reasonable requests for explanations and interpretations of those records.

(4) The right of an opportunity for a proceeding to challenge the content and accuracy of those records according to WAC 106-172-761.

(5)(a) Students wishing access under provisions of this policy to education records maintained by the university should address a request in writing to the person in charge of maintenance of that record. If copies are requested, copies may be supplied at no more than the cost of making the copy, including supplies and staff time.

(b) The individual responsible for maintenance of any record shall respond to written requests only, and provide copies as requested, within ((twenty)) forty-five working days. The university registrar is not prohibited from providing a student with a copy of the student's academic transcript from CWU, but is prohibited from providing a student with a copy of the student's official academic transcripts from other institutions.

(6) The office of the vice-president for student affairs and enrollment management will maintain a file showing what education records are maintained by any department or entity of the university and the title and address of the official responsible for maintenance of each record.

#### AMENDATORY SECTION (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-735 Exception to consent requirements and record of access.** (1) The university may disclose personally identifiable information from the education records of a student without the written consent of the student if the disclosure is to:

(a) University officials, including faculty members, when the information is required for a legitimate educational purpose;

(b) Officials of another school in which the student seeks or intends to enroll, providing a reasonable attempt has been made to notify the student of the transfer of the records at the last known address of the student — except when the transfer of the records is initiated by the student;

(c) Federal or state officials requiring access to education records in connection with the audit or evaluation of federally or state-supported educational programs. Such surveys must be administered in a manner which will not permit personal identification of students by individuals other than those conducting the study, and such information will be destroyed when no longer needed for the purposes for which it was provided;

(d) ~~((Agencies requesting information in connection with a student's application for, or receipt of, financial aid)) Persons or organizations providing financial aid, individuals and organizations charged with oversight of the university, or of federal or state programs in which the university participates;~~

(e) Accrediting organizations in order to carry out their accrediting functions;

(f) ~~Parents of any student under the age of twenty-one, regardless of the student's dependency status, in cases where the student has violated laws or university rules governing alcohol or controlled substances;~~

(g) Any personal subpoena and/or subpoena duces tecum, when lawfully prepared and served upon the university or an appropriate administrator of the university. The university will notify the student by certified or registered mail to the address or addresses on file with the university of any such subpoena. Such a notice will be sent to the student in advance of compliance with the subpoena((-));

(h) ~~Persons in an emergency to protect the health and safety of students or other persons according to WAC 106-172-772;~~

(i) ~~The U.S. Citizenship and Immigration Service under the terms and provisions of immigration law.~~

(2) Any student may grant permission for use of information about himself/herself by giving specific permission in writing, signed and dated by the student giving such consent to include:

(a) A specification by title of the records released;

(b) The reasons for such release;

(c) The names of the parties to whom such records will be released; and

(d) A written statement indicating that the information cannot subsequently be released in a personally identifiable form to any other party without the written consent of the student involved.

(3) The university shall maintain a record which will indicate all parties, other than those parties specified in WAC 106-172-735 (1)(a), who have been granted access to a student's education records. The record will:

(a) Indicate specifically the legitimate interest that each such party has in obtaining the information.

(b) Be available only to the student, to the employees of the university responsible for maintaining the records, and to the parties identified under WAC 106-172-735 (1)(a) and (d).

**AMENDATORY SECTION** (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-763 Informal proceedings.** (1) Whenever possible the university shall attempt to settle disputes regarding requests to amend education records through informal proceedings.

(2) A student who wishes to exercise the rights set forth in WAC 106-172-761(2) shall:

(a) First, attempt a resolution with the university official who has custody of the education records; and

(b) Second, discuss with the vice-president for student affairs and enrollment management or designee the nature of the corrective action recommended by the student.

**AMENDATORY SECTION** (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-765 Conduct of the proceeding.** (1) If informal proceedings fail to resolve the complaint of a student, the student may file with the vice-president for student affairs and enrollment management a written request for the proceeding before a proceeding officer of the university to be designated by the vice-president for student affairs and enrollment management, and who does not have a direct interest in the outcome of the proceeding.

(2) The proceeding shall be held within a reasonable time (not to exceed twenty working days) after the university has received the request and the student shall be given notice of the date, place, and time reasonably in advance of the proceeding.

(3) The student shall be given an opportunity to present evidence relevant to the issues raised in WAC 106-172-761(2) and may be represented by any person (including an attorney) of the student's choosing at his or her expense.

(4) A decision in writing shall be prepared within a reasonable period of time (not to exceed ten working days), which decision shall be based solely upon the evidence presented, and which includes a summary of the evidence and the reasons for the decision.

(5) If, as a result of the proceeding, the decision is:

(a) To amend the record, the university must do so accordingly and give notice to the student.

(b) Not to amend, the student must be allowed to place a written comment or explanation in the student's file, and it must be kept in the file as long as the file itself is kept. If the contested portion of the file is disclosed to anybody, the student's statement must also be disclosed.

(6) The designated proceeding officer shall be advised by the assistant attorney general representing the university.

**AMENDATORY SECTION** (Amending Order CWU AO 75, filed 10/12/94, effective 11/12/94)

**WAC 106-172-772 Release of information for health or safety emergencies.** (1) The university (president or designee, vice-president for student affairs and enrollment management) may release information from education records to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(2) The factors which should be taken into account in determining whether records may be released shall include:

(a) The seriousness of the threat to the health or safety of the student or other persons;

(b) The need for such records to meet the emergency;

(c) Whether the persons to whom such records are released are in a position to deal with the emergency; and

(d) The extent to which time is of the essence in dealing with the emergency.

**WSR 06-23-108**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed November 17, 2006, 10:25 a.m., effective December 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 16-157 WAC sets standards for the certification of organic producers, processors, handlers, and retailers. The rule provides the criteria for obtaining organic and transitional certification and sets fees for organic certification. The rule adopts the USDA National Organic Program. New fees are established and selected fees are increased to recover the full cost of the program as required by statute.

Citation of Existing Rules Affected by this Order: Amending WAC 16-157-010 through 16-157-030, and 16-157-220 through 16-157-290.

Statutory Authority for Adoption: RCW 15.86.060 and 15.86.070.

Adopted under notice filed as WSR 06-20-109 on October 4, 2006.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule stated that late fees would increase by \$150 per month. The agency received comments that the proposed late fee increase was excessive. The agency agrees and has reduced the increase from \$150 per month to \$100 per month.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2006.

Valoria H. Loveland  
Director

**AMENDATORY SECTION** (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

**WAC 16-157-010 Purpose.** This chapter is ((promulgated pursuant to)) adopted under RCW 15.86.060 wherein the director is authorized to adopt rules for the proper administration of the Organic Food Products Act, and ((pursuant to)) under RCW 15.86.070 wherein the director is authorized to adopt rules establishing a certification program for producers, processors, and handlers of organic and transitional food.

**AMENDATORY SECTION** (Amending WSR 04-24-015, filed 11/22/04, effective 12/23/04)

**WAC 16-157-020 Adoption of the National Organic Program.** The ((200+)) Washington state department of agriculture adopts the standards of the National Organic Program ((final rule)), 7 CFR Part 205, effective ((November 3, 2003, is adopted by reference as Washington state standards)) September 11, 2006, for the production and handling of organic crops, livestock, and processed food products. The National Organic Program ((final)) rules may be obtained from the department.

**AMENDATORY SECTION** (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-030 Definitions.** As used in this chapter:

((1))) "Department" means the Washington state department of agriculture ((of the state of Washington)).

((2))) "Director" means the director of the department of agriculture or his or her duly authorized representative.

((3))) "Facility" includes, but is not limited to, any premises, plant, establishment, ((facilities)) facility and ((the)) associated appurtenances ((thereto, in whole or in part,)) where organic food is prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any other such ((other)) facility selling or distributing to ((the ultimate)) consumers.

((4))) "Gross annual income" means the total monetary value received during a twelve-month period of time. The twelve-month period of time may be a fiscal year or a calendar year.

"Handler" means any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production.

"Handling operation" means any operation or portion of an operation that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

"New applicant" means any person ((that)) who applies for organic certification for the first time, or ((when previous certification status has expired for at least one year)) any per-

son who has surrendered an organic certification or had an organic certification suspended or revoked.

"Person" means any individual, partnership, limited liability company, association, cooperative, or other entity.

((5))) "Processor" means any handler engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, slaughtering or otherwise processing organic food.

((6))) "Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

"Production operation" means a farm, ranch, or other business that grows, gathers, or raises crops, wild crops, or livestock.

"Renewal applicant" means any person that has received organic certification from the department in the previous year.

((7))) "Retailer" means any handler that sells organic food products directly to consumers.

((8))) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

((9))) "Site" means a contiguous defined field, orchard, block, pasture, paddock, garden, circle, plot or other designated area under the same management practices (e.g., organic, transitional).

((10))) "Transitional product" means any agricultural product that (a) is marketed using the term transitional in its labeling and advertising and (b) satisfies all of the requirements of organic except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

**AMENDATORY SECTION** (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

**WAC 16-157-210 Confidentiality.** Except for applications and laboratory analyses submitted for certification under this chapter, the department keeps confidential any business-related information obtained under this chapter. All business-related information submitted to the department under this chapter is exempt from public inspection and copying consistent with RCW 15.86.110 and ((42.17.310)) 42.56.210.

**NEW SECTION**

**WAC 16-157-215 General requirements for certification.** (1) Except for operations exempt or excluded in the National Organic Program (7 CFR 205.101), each production or handling operation or specified portion of a production or handling operation must be certified if it produces or handles crops, livestock, livestock products, or other agricultural products intended to be sold, labeled, or represented as "one hundred percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

(a) If you have an operation that meets the definition of "production operation," you must be certified as a producer.

(b) If you have an operation that meets the definition of "handling operation," you must be certified as a handler or processor unless you are a certified producer who cleans, washes, grades, dries, packages, transports, or does similar preparation of your own production.

(c) If you are a certified producer who changes crops, wild crops, or livestock products of your own production into new distinct products by physically, chemically, or otherwise changing the original product, you must also be certified as a processor.

(2) If you are seeking to receive or maintain organic certification, you must submit an application on forms approved by the department.

(a) Application forms must be signed by an authorized representative of the business operation and must be accompanied by the appropriate fees in order to be considered.

(b) Application forms are available upon request from the department.

(3) If you are a new applicant, you must include a complete organic system plan with your application.

(4) If you are a certified operation, you must submit an update to your organic system plan on an annual basis. Certified operations may be required by the department to submit a new complete organic system plan whenever there are significant changes to the operation.

(5) Applications for certification must include a list of all organic products produced and/or handled, including sample labels and complete product profiles for each distinctly labeled organic product.

(a) Certified operations must not use an organic label or make organic claims for any product not included in the operation's organic system plan.

(b) Certified operations may add new products to their organic certification by submitting sample labels and complete product profiles to the department where applicable.

(c) Product profiles must include a complete list of ingredients in the product and processing aids used in manufacturing the product.

(6) Certified operations that do not submit a renewal application and fees to continue certification or do not comply annually with 7 CFR 205.406 may have their certification suspended.

#### AMENDATORY SECTION (Amending WSR 05-22-055, filed 10/28/05, effective 11/28/05)

#### **WAC 16-157-220 Producer fee schedule. ((Producers who wish to apply for the organic food certification program must apply to the department each year.)**

((1) The cost per application shall be based on the following fee schedule:

##### **(a) Renewal applicants—**

Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after February 1, must pay a late fee of seventy-five dollars.

~~Renewal applicants that are adding additional sites to their organic certification must pay a new site fee of fifty dollars for each additional site.~~

##### **(b) New applicants—**

~~Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee. New applicants that are seeking organic certification for more than one site must pay a site fee of fifty dollars for each additional site. The fee shall accompany the application.) (1) If you wish to apply for the organic producer certification program, you must submit an application and fees to the department each year.~~

**(2) Annual fees:** The cost per producer application is based on the following fee schedule.

<b>((SALES)) GROSS ANNUAL INCOME</b>	<b>ANNUAL FEE</b>
\$ 0 -	\$ 15,000 .....
\$ 15,001 -	\$ 20,000 .....
\$ 20,001 -	\$ 25,000 .....
\$ 25,001 -	\$ 30,000 .....
\$ 30,001 -	\$ 35,000 .....
\$ 35,001 -	\$ 42,500 .....
\$ 42,501 -	\$ 50,000 .....
\$ 50,001 -	\$ 65,000 .....
\$ 65,001 -	\$ 80,000 .....
\$ 80,001 -	\$100,000 .....
\$100,001 -	\$125,000 .....
\$125,001 -	\$150,000 .....
\$150,001 -	\$175,000 .....
\$175,001 -	\$200,000 .....
\$200,001 -	\$240,000 .....
\$240,001 -	\$280,000 .....
\$280,001 -	\$325,000 .....
\$325,001 -	\$375,000 .....
\$375,001 -	\$425,000 .....
\$425,001 -	\$500,000 .....
\$500,001 -	\$750,000 .....
\$750,001 -	and up .. \$2,200 plus 0.11% of gross organic sales

~~((2) Transitional acreage fee—In addition to the producer application fee, each applicant must pay a fee of fifty dollars per site for the land for which they are requesting transitional certification.) (a) New applicants: Application fees are based on an estimate of the gross annual income from organic agricultural products.~~

**((i) In the event that the actual gross annual income from organic agricultural products exceeds the estimated gross**

annual income from organic agricultural products, the department may bill the producer for the additional fee.

(ii) In the event that the actual gross annual income from organic agricultural products is less than the estimated gross annual income from organic agricultural products, the producer may request a refund for the reduced fee.

(b) **Renewal applicants:** Application fees are based on the previous year's gross annual income from organic agricultural products.

(i) In the event that the current year's gross annual income from organic agricultural products exceeds the previous year's gross annual income from organic agricultural products, the department may bill the producer for the additional fee.

(ii) In the event that the current year's gross annual income is less than the previous year's gross annual income from organic agricultural products, the producer may request a refund for the reduced fee.

(c) **Late fees:** Renewal applications postmarked after February 1 must include a late fee in addition to the renewal fee.

**If your application is postmarked**

**after February 1 but before:**

	<b>The late fee is:</b>
March 1	\$100.00
April 1	\$200.00
May 1	\$300.00
June 1	\$400.00
July 1	\$500.00
August 1	\$600.00

**(3) Site fee:**

(a) Each site that is involved in organic production must be inspected on an annual basis.

(b) All sites involved in organic production must be included as part of the producer's organic system plan.

(c) The producer of each site that is included in the organic system plan must pay a site inspection fee of twenty dollars per year.

(4) **Transitional certification fee:** In addition to the producer application fee, if you are requesting transitional certification, you must pay a fifty dollar transitional certification fee for each site request.

(5) **New application fee:** New applicants must pay a two hundred fifty dollar new application fee in addition to the annual fees.

**AMENDATORY SECTION** (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-230 Processor fee schedule.** ((Producers who wish to apply for the organic food certification program must apply to the department each year. Producers that process their own organic products pay application and certification fees under WAC 16-157-220.

**(1) Application fee:**

(a) **Renewal applicants:** Application fees are two hundred dollars per facility. In addition, renewal applications

postmarked after March 1, must pay a late fee of seventy-five dollars.

(b) **New applicants:** Application fees are two hundred dollars per facility. In addition, new applicants must pay a one hundred dollar new applicant fee.

(2) **Certification fee:** A certification fee based on the following fee schedule must accompany the application. Certification fees are assessments on the organic products in each category. New applicants must base certification fees on an estimate of sales in each category. Renewal applicants must base certification fees on the previous calendar year's sales in each category. Applicants may have food products in more than one category-)) (1)(a) If you wish to apply for organic processor certification, you must submit an application and fees to the department each year.

(b) If you are a producer who processes your own organic products, you may pay application and certification fees under WAC 16-157-220 or apply separately as a processor.

**(2) Application fees:**

(a) **New applicants:** New applicants must pay an application fee of two hundred dollars per application and a new applicant fee of two hundred fifty dollars.

(b) **Renewal applicants:** Application fees are two hundred dollars per renewal application.

(c) **Late fees:** Renewal applications postmarked after March 1 must include a late fee in addition to the renewal fee.

**If your application is postmarked**

**after March 1 but before:**

	<b>The late fee is:</b>
April 1	\$100.00
May 1	\$200.00
June 1	\$300.00
July 1	\$400.00
August 1	\$500.00
September 1	\$600.00

**(3) Certification fees:**

(a) **Category I - Organic food products:** Products labeled as "organic" or "one hundred percent organic" are assessed 0.30% of the previous ((calendar)) year's ((sales)) gross annual income for the first million dollars and 0.11% for ((sales)) gross annual income above one million dollars.

(b) **Category II - Made with organic food products:** Products labeled as "made with organic ingredients" are assessed 0.20% of the previous ((calendar)) year's ((sales)) gross annual income for the first million dollars and 0.07% for ((sales)) gross annual income above one million dollars.

(c) **Category III - Food products with organic ingredients:** Products packaged for retail sales that limit ((their)) organic claims to the information panel are assessed 0.11% of the previous ((calendar)) year's ((sales)) gross annual income for the first million dollars and 0.04% for ((sales)) gross annual income above one million dollars.

(d) **Category IV - Custom organic food products:** Products produced by processors who charge a service fee to organic manufacturers for processing organic food are assessed at 0.40% of the previous ((calendar)) year's service

fees received for processing organic food for the first million dollars and 0.11% for service fees above one million dollars.

(e) In the event that the current ((calendar)) year's ((sales (or service fees))) gross annual income exceeds the previous year's ((sales (or service fees))) gross annual income or estimate of ((sales)) income, the department may bill the applicant for the additional certification fee.

(f) In the event that the current ((calendar)) year's ((sales (or service fees) are)) gross annual income is less than the previous year's gross ((sales (or service fees))) annual income or estimate of sales, the applicant may request a refund for the reduced certification fee.

**AMENDATORY SECTION** (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-240 Handler fee schedule.** ((Handlers who)) (1) If you wish to apply for the organic food certification program, you must ((apply)) submit an application and fees to the department each year.

(a) Handlers ((that)) who process organic food products must apply for organic certification under WAC 16-157-230.

(b) Retailers who wish to apply for the organic food certification program must apply for organic certification under WAC 16-157-245.

(c) Producers ((that)) who package, store, or handle organic products from other certified organic operations must apply for certification as a handler under this section.

(d) Producers who handle only their own organic products do not need to obtain separate certification as handlers.

(e) Producers who are certified as handlers under this section pay certification fees for their own production under WAC 16-157-220 and do not include sales of their own production in the calculation of their handler certification fees.

(f) All other handlers of organic food products may apply for organic certification under this section.

((1)) Renewal applicants. Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the handler may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of seventy-five dollars.

((2)) New applicants. Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the estimate, the handler may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee.

((3)) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.) (2) **Annual fees:** The cost per organic handler application is based on the following schedule.

<u>((ORGANIC SALES)) GROSS ANNUAL INCOME</u>	<u>FEE</u>
\$ 0 - \$ 50,000	\$ 200
\$ 50,001 - \$ 75,000	\$ 250
\$ 75,001 - \$ 100,000	\$ 330
\$ 100,001 - \$ 200,000	\$ 440
\$ 200,001 - \$ 300,000	\$ 550
\$ 300,001 - \$ 400,000	\$ 660
\$ 400,001 - \$ 500,000	\$ 770
\$ 500,001 - \$ 750,000	\$ 990
\$ 750,001 - \$ 1,000,000	\$ 1,100
\$1,000,001 - \$ 1,250,000	\$ 1,375
\$1,250,001 - \$ 1,500,000	\$ 1,650
\$1,500,001 - \$ 2,000,000	\$ 2,200
\$2,000,001 - \$ 2,500,000	\$ 2,750
\$2,500,001 - \$ 3,000,000	\$ 3,300
\$3,000,001 - \$ 4,000,000	\$ 3,850
\$4,000,001 - \$ 5,000,000	\$ 4,400
\$5,000,001 - \$ 6,000,000	\$ 5,500
\$6,000,001 - \$ 7,000,000	\$ 6,600
\$7,000,001 - \$ 8,000,000	\$ 7,700
\$8,000,001 - \$ 9,000,000	\$ 8,800
\$9,000,001 - \$ 10,000,000	\$ 9,900
over \$ 10,000,000	\$ 11,000

(a) **New applicants:** Application fees are based on an estimate of the gross annual income from organic agricultural products.

(i) In the event that the actual gross annual income exceeds the estimate, the department may bill the handler for the additional fee.

(ii) In the event that the actual gross annual income from organic agricultural products is less than the estimate, the handler may request a refund for the reduced fee.

(b) **Renewal applicants:** Application fees are based on the previous year's gross annual income from organic agricultural products.

(i) In the event that the current year's gross annual income from organic agricultural products exceeds the previous year's gross annual income from organic agricultural products, the department may bill the handler for the additional fee.

(ii) In the event that the current year's gross annual income from organic agricultural products is less than the previous year's gross annual income from organic agricultural products, the handler may request a refund for the reduced fee.

(c) **Late fees:** Renewal applications postmarked after March 1 must include a late fee in addition to the renewal fee.

**If your application is postmarked**

**after March 1 but before:**

April 1

\$100.00

May 1

\$200.00

**If your application is postmarked after March 1 but before:**

	<u>The late fee is:</u>
<u>June 1</u>	<u>\$300.00</u>
<u>July 1</u>	<u>\$400.00</u>
<u>August 1</u>	<u>\$500.00</u>
<u>September 1</u>	<u>\$600.00</u>

**(d) New application fee:** New applicants must pay a two hundred fifty dollar new application fee in addition to the annual fees.

**AMENDATORY SECTION** (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-245 Retailer fee schedule.** ((Retailers who wish to apply for the organic food certification program must apply to the department each year.))

**(1) Renewal applicants.** Application fees must be based on the previous calendar year's sales of organic products. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the retailer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of seventy-five dollars.

**(2) New applicants.** Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the retailer may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee.

**(3) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.)** **(1) If you are seeking organic retailer certification, you must submit an application and fees to the department each year.**

**(2) Application fees:** The cost per retailer application is based on the following schedule.

<u>((ORGANIC SALES)) GROSS ANNUAL INCOME</u>	<u>FEE</u>
\$ 0 - \$100,000 .....	\$330
\$100,001 - \$500,000 .....	\$500
\$500,001 - \$1,000,000 .....	\$750
\$1,000,001 - \$2,000,000 .....	\$1,000
\$2,000,001 - \$3,000,000 .....	\$1,500
\$3,000,001 - \$4,000,000 .....	\$2,000
\$4,000,001 - \$5,000,000 .....	\$2,250
over - \$5,000,000 .....	\$2,500

**(a) New applicants:** Application fees are based on an estimate of the gross annual income from organic agricultural products.

**(i) In the event that the actual gross annual income from organic agricultural products exceeds the estimate, the department may bill the retailer for the additional fee.**

**(ii) In the event that the actual gross annual income from organic agricultural products is less than the estimated gross annual income from organic agricultural products, the retailer may request a refund for the reduced fee.**

**(b) Renewal applicants:** Application fees are based on the previous year's gross annual income from organic agricultural products.

**(i) In the event that the current year's gross annual income from organic agricultural products exceeds the previous year's gross annual income from organic agricultural products, the department may bill the producer for the additional fee.**

**(ii) In the event that the current year's gross annual income from organic agricultural products is less than the previous year's gross annual income from organic agricultural products, the producer may request a refund for the reduced fee.**

**(c) Late fees:** Renewal applications postmarked after March 1 must include a late fee in addition to the renewal fee.

**If your application is postmarked****after March 1 but before:**

	<u>The late fee is:</u>
<u>April 1</u>	<u>\$100.00</u>
<u>May 1</u>	<u>\$200.00</u>
<u>June 1</u>	<u>\$300.00</u>
<u>July 1</u>	<u>\$400.00</u>
<u>August 1</u>	<u>\$500.00</u>
<u>September 1</u>	<u>\$600.00</u>

**(d) New application fee:** New applicants must pay a two hundred fifty dollar new application fee in addition to the annual fees.

**AMENDATORY SECTION** (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-250 Inspections.** **(1)(a) The director shall make ((at least one inspection and any additional inspections deemed necessary to each applicant each year)) one or more inspections per year of each certified producer, processor, or handler to determine compliance with this chapter and chapter 15.86 RCW ((and rules adopted pursuant to chapter 15.86 RCW)).**

**((This inspection may entail)) (b) Inspections may include a survey of required records, examination of fields, facilities and storage areas, and inspection of any other information deemed necessary by the requirements of this chapter.**

**(2) The annual on-site inspection and any additional inspections conducted for collecting samples or for surveillance within the state of Washington are provided for under the application and certification fees.**

**(a) Additional inspections, if necessary to determine compliance or requested, will be charged to the ((applicant)) certified producer, processor, or handler at the rate of forty dollars per hour plus ((mileage)) associated travel costs as set**

((at the rate established)) by the state office of financial management.

(b) Out-of-state inspections, if necessary or requested, shall be at the rate of ((~~\$40/hr.~~)) forty dollars per hour plus ((transportation)) associated travel costs.

(3) Expedited inspections and evaluations are defined as inspections and evaluations that are conducted outside of the normal inspection and evaluation schedule. Expedited inspections and evaluations are conducted in less than two weeks from the receipt of a written notice.

(a) Applicants for certification and certified operations may request expedited inspections or evaluations.

(b) The department may provide expedited inspections and evaluations if sufficient staff is available to expedite the work.

(c) Expedited inspections and evaluations shall be at the rate of forty dollars per hour, plus associated travel costs.

AMENDATORY SECTION (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-255 Sampling.** A representative sample of ((the)) any organic product may be tested for pesticide or other contaminants whenever the director deems it necessary for organic certification or maintenance of organic certification. Sample analysis is provided under the application and certification fees.

AMENDATORY SECTION (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-260 Organic and transitional producer certification and the use of logos.** (1) ((Organic producers certified under this chapter may use the organic producer logo, found in WAC 16-157-275, to identify organic products.))

Transitional producers certified under this chapter may use the transitional producer logo, found in WAC 16-157-275, to identify transitional products.

((2))) The director must review the application, inspection report, and results of any samples collected to determine ((that the)) if a producer has complied with the conditions for organic or transitional certification. A certificate will be issued when the director determines that the producer has complied with the conditions for organic or transitional producer certification.

(2) Organic producers certified under this chapter may use the organic producer logo, found in WAC 16-157-275, to identify organic products.

(3) Transitional products certified under this chapter may use the transitional producer logo, found in WAC 16-157-275, to identify transitional products.

AMENDATORY SECTION (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-270 Organic food processor and handler certification and use of logos.** (1) The director must review the application, inspection report, and results of any organic samples collected to determine ((that the)) if a processor or handler has complied with the conditions for

organic food certification. An organic food certificate will be issued when the director determines that the processor or handler has complied with the conditions for organic food certification.

(2) Processors certified under this chapter may use the organic processor logo, found in WAC 16-157-275, to identify organic products processed by the facility.

(3) Handlers certified under this chapter may use the organic handler logo, found in WAC 16-157-275, to identify organic products handled by the facility.

AMENDATORY SECTION (Amending WSR 03-03-044, filed 1/10/03, effective 2/10/03)

**WAC 16-157-290 Export and transaction certificates.** (1) Organic export and transaction certificates are issued to verify that a specific shipment of organic food products has been produced, processed, and handled in accordance with the ((2001)) National Organic Program, 7 CFR Part 205, or a foreign organic standard.

(2) Applications for export and transaction certificates must be submitted on forms furnished by the department. The applicant must furnish all information requested on the application. A separate application must be made for each export and transaction certificate.

(3) The fee for export and transaction certificates ((shall be)) is forty dollars per application.

#### WSR 06-23-114

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 06-289—Filed November 17, 2006, 4:24 p.m., effective December 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-025 and 220-56-129.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-19-024 on September 11, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2006.

Nancy Burkhart  
for Ron Ozment, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 02-278, filed 11/6/02, effective 12/7/02)

**WAC 220-20-025 General provisions—Shellfish.** (1)

It is unlawful to drive or operate any motor-propelled vehicle, land any airplane or ride or lead any horse on the razor clam beds of the state of Washington, as defined in WAC 220-16-257. A violation of this subsection shall be punished as an infraction.

(2) It is unlawful to possess soft-shelled crab for any commercial purpose.

(3) It is unlawful to possess in the field any crab from which the back shell has been removed.

(4) It is unlawful to willfully damage crab or other shellfish. Any crab taken incidentally to a net fishery must be immediately returned to the water with the least possible damage to the crab.

(5) "Shellfish" includes all bodily parts but does not include five pounds or less of relic shells of classified shellfish or relic shells of unclassified freshwater and marine invertebrates. A relic (dead) shell is defined as one which apparently died of natural causes and contains no meat or soft parts; it readily exhibits noticeable sediment, vegetation, algal or mineral stains, discolorations, soiling, weathering or other visual evidence on its interior surface which clearly and unambiguously shows the shell has not been cooked-out or freshly cleaned. No license or permit is required to take or possess up to five pounds of relic shells per day. It is unlawful to take or possess more than five pounds of relic shells without first obtaining a scientific collection permit. Notwithstanding the provisions of this section, it is unlawful to remove relic oyster shells from tidelands.

**AMENDATORY SECTION** (Amending Order 05-15, filed 2/10/05, effective 5/1/05)

**WAC 220-56-129 Unclassified freshwater invertebrates and fish.** (1) Definitions. For purposes of this section, "freshwater clams and mussels" means all freshwater bivalves existing in Washington in a wild state, except prohibited aquatic animal species classified under WAC 232-12-090.

(2) It is unlawful for any person to take or possess freshwater clams and mussels taken for personal use. Freshwater clams and mussels include all bodily parts but does not include five pounds or less of relic shells of freshwater clams and mussels. A relic (dead) shell is defined as one which apparently died of natural causes and contains no meat or soft parts; it readily exhibits noticeable sediment, vegetation, algal or mineral stains, discolorations, soiling, weathering or other visual evidence on its interior surface which clearly and unambiguously shows the shell has not been cooked-out or freshly cleaned. No license or permit is required to take or possess up to five pounds of relic shells per day. It is unlaw-

ful to take or possess more than five pounds of relic shells without first obtaining a scientific collection permit.

(3) It is unlawful for any person to take, fish for or possess Pacific lamprey, western brook lamprey, or river lamprey taken for personal use.

(4) Violation of this rule is punishable under RCW 77.15.140.

**WSR 06-23-117**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 06-04—Filed November 20, 2006, 2:28 p.m., effective December 21, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule:

- Changes the designated uses for many rivers from "spawning and noncore rearing" to "core summer salmonid habitat" and changes rule text to support the basis for these changes. This results in many rivers going from a seven-day average temperature of 17.5°C to a seven-day average daily maximum of 16°C and the dissolved oxygen criteria will go from 8.0 mg/l to 9.5 mg/l.
- Changes a small number of rivers to the "char spawning and rearing" designated use type and change rule text to support the basis for these changes. This will result in some rivers going to a seven-day average daily maximum of 12°C from the old daily seven-day average of 16°C or 17.5°C.
- Adds spawning locations and timing windows where explicit spawning/incubation temperature criteria would apply for salmonids. These changes apply a seven-day average daily maximum criterion of 13°C to protect spawning and incubation of salmon and trout (9°C for the spawning of bull trout).
- Correct miscellaneous minor (typographic) errors introduced during the 2003 rule making.

Citation of Existing Rules Affected by this Order: Amending chapter 173-201A WAC.

Statutory Authority for Adoption: RCW 90.48.035.

Adopted under notice filed as WSR 06-13-104 on June 21, 2006.

Changes Other than Editing from Proposed to Adopted Version: Only corrections, editing, and clarification changes have been made. No changes have been made that alter the substance of the proposed regulation.

A final cost-benefit analysis is available by contacting Melissa Gildersleeve, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6461, fax (360) 407-6426, e-mail [mgil461@ecy.wa.gov](mailto:mgil461@ecy.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2006.

Jay J. Manning  
Director

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-200 Fresh water designated uses and criteria.** The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated ((using the following categories of key species)) based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char.** For the protection of spawning and early tributary rearing (e.g., first year juveniles) of native char (bull trout and Dolly Varden), and other associated aquatic life.

(ii) **Salmon and trout spawning, core rearing, and migration.** For the protection of spawning, core rearing, and migration of salmon and trout, and other associated aquatic life.

(iii) **Salmon and trout spawning, noncore rearing, and migration.** For the protection of spawning, noncore rearing, and migration of salmon and trout, and other associated aquatic life.

(iv) **Salmon and trout rearing and migration only.** For the protection of rearing and migration of salmon and trout, and other associated aquatic life.) **spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **Non-anadromous interior redband trout.** For the protection of waters where the only trout species is a non-anadromous form of self-reproducing interior redband trout (*O. mykis*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redside shiner, chisel-mouth, sucker, and northern pike minnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)**  
**Aquatic Life Temperature Criteria in Fresh Water**

Category	Highest 7-DADMax
<u>Char Spawning</u>	9°C (48.2°F)
<u>Char Spawning and Rearing</u>	12°C (53.6°F)
<u>Salmon and Trout Spawning</u>	13°C (55.4°F)
(( <u>Salmon and Trout Spawning, Core Rearing, and Migration</u> ))	16°C (60.8°F)
<u>Core Summer Salmonid Habitat</u>	
(( <u>Salmon and Trout</u> )) <u>Salmonid Spawning, ((Noncore)) Rearing, and Migration</u>	17.5°C (63.5°F)
(( <u>Salmon and Trout</u> )) <u>Salmonid Rearing and Migration Only</u>	17.5°C (63.5°F)
Non-anadromous Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the ((natural)) background condition of the water is cooler than the criteria in Table 200 (1)(c), the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:

(A) Incremental temperature increases resulting from individual point source activities must not, at any time, exceed  $((28/(T+5)) \cdot 28/(T+7))$  as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge); and

(B) Incremental temperature increases resulting from the combined effect of all nonpoint source activities in the water body must not, at any time, exceed  $2.8^{\circ}\text{C}$  ( $5.04^{\circ}\text{F}$ ).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ten years on average.

(iv) Spawning and incubation protection. ((Where the department determines the temperature criteria established for a water body would likely not result in protective spawning and incubation temperatures, the following criteria apply:)) The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's web site at [www.ecy.wa.gov](http://www.ecy.wa.gov)). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of  $9^{\circ}\text{C}$  ( $48.2^{\circ}\text{F}$ ) at the initiation of spawning and at fry emergence for char; and

- Maximum 7-DADMax temperatures of  $13^{\circ}\text{C}$  ( $55.4^{\circ}\text{F}$ ) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period. ((The department will maintain a list of waters where the single summer maximum criterion is not sufficient to protect spawning and incubation.))

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than  $0.3^{\circ}\text{C}$  ( $0.54^{\circ}\text{F}$ ) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-602:

(A) Moderately acclimated ( $16\text{--}20^{\circ}\text{C}$ , or  $60.8\text{--}68^{\circ}\text{F}$ ) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below  $22^{\circ}\text{C}$  ( $71.6^{\circ}\text{F}$ ) and the 1-

day maximum (1-DMax) temperature at or below  $23^{\circ}\text{C}$  ( $73.4^{\circ}\text{F}$ ).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than  $17.5^{\circ}\text{C}$  ( $63.5^{\circ}\text{F}$ ).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above  $33^{\circ}\text{C}$  ( $91.4^{\circ}\text{F}$ ) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than  $22^{\circ}\text{C}$  ( $71.6^{\circ}\text{F}$ ) and the adjacent downstream water temperatures are  $3^{\circ}\text{C}$  ( $5.4^{\circ}\text{F}$ ) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L). Table 200 (1)(d) lists the 1-day minimum D.O. for each of the aquatic life use categories.

**Table 200 (1)(d)**  
**Aquatic Life Dissolved Oxygen Criteria in Fresh Water**

Category	Lowest 1-Day Minimum
Char Spawning and Rearing	9.5 mg/L
((Salmon and Trout Spawning, Core Rearing, and Migration))	9.5 mg/L
Core Summer Salmonid Habitat	
((Salmon and Trout)) Salmonid Spawning, ((Noneore))) Rearing, and Migration	8.0 mg/L
((Salmon and Trout)) Salmonid Rearing and Migration Only	6.5 mg/L
Non-anadromous Interior Red-band Trout	8.0 mg/L
Indigenous Warm Water Species	6.5 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ten years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1)(e)**  
**Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char <u>Spawning and Rearing</u>	Turbidity shall not exceed: <ul style="list-style-type: none"><li>• 5 NTU over background when the background is 50 NTU or less; or</li><li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li></ul>
((Salmon and Trout Spawning, <u>Core Rearing, and Migration</u> ) <u>Core Summer Salmonid Habitat</u> )	Same as above.
((Salmon and Trout)) <u>Salmonid Spawning, ((Non-core)) Rearing, and Migration</u>	Same as above.
((Salmon and Trout)) <u>Salmonid Rearing and Migration Only</u>	Turbidity shall not exceed: <ul style="list-style-type: none"><li>• 10 NTU over background when the background is 50 NTU or less; or</li><li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li></ul>
Non-anadromous Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"><li>• 5 NTU over background when the background is 50 NTU or less; or</li><li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li></ul>
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"><li>• 10 NTU over background when the background is 50 NTU or less; or</li><li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li></ul>

(i) The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written

authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1)(f) lists the maximum TDG criteria for each of the aquatic life use categories.

**Table 200 (1)(f)**  
**Aquatic Life Total Dissolved Gas Criteria in Fresh Water**

Category	Percent Saturation
Char <u>Spawning and Rearing</u>	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
((Salmon and Trout Spawning, <u>Core Rearing, and Migration</u> ) <u>Core Summer Salmonid Habitat</u> )	Same as above.
((Salmon and Trout)) <u>Salmonid Spawning, ((Non-core)) Rearing, and Migration</u>	Same as above.
((Salmon and Trout)) <u>Salmonid Rearing and Migration Only</u>	Same as above.
Non-anadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, ten-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams when consistent with a department approved gas abatement plan. This plan must be accompanied by fisheries management and physical and biological monitoring plans. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

- TDG must not exceed an average of one hundred fifteen percent as measured in the forebays of the next downstream dams and must not exceed an average of one hundred twenty percent as measured in the tailraces of each dam (these averages are measured as an average of the twelve highest consecutive hourly readings in any one day, relative to atmospheric pressure); and
- A maximum TDG one hour average of one hundred twenty-five percent must not be exceeded during spillage for fish passage.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1) (g)**  
**Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
((Salmon and Trout Spawning, Core Rearing, and Migration)) Core Summer Salmonid Habitat	Same as above.
((Salmon and Trout)) Salmonid Spawning, ((Non-core)) Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
((Salmon and Trout)) Salmonid Rearing and Migration Only	Same as above.
Non-anadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(2) **Recreational uses.** The recreational uses are extraordinary primary contact recreation, primary contact recreation, and secondary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and

(ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2)(b) lists the bacteria criteria to protect water contact recreation in fresh waters.

**Table 200 (2)(b)**  
**Water Contact Recreation Bacteria Criteria in Fresh Water**

Category	Bacteria Indicator
Extraordinary Primary Contact Recreation	Fecal coliform organism levels must not exceed a geometric mean value of 50 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 100 colonies/100 mL.
Primary Contact Recreation	Fecal coliform organism levels must not exceed a geometric mean value of 100 colonies /100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 200 colonies /100 mL.
Secondary Contact Recreation	Fecal coliform organism levels must not exceed a geometric mean value of 200 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 400 colonies /100 mL.

(i) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a thirty-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed twelve months, and should have sample collection dates well distributed throughout the reporting period.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recre-

ational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

**General criteria.** General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

#### AMENDATORY SECTION (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-210 Marine water designated uses and criteria.** The following uses are designated for protection in marine surface waters of the state of Washington. Use designations for specific water bodies are listed in WAC 173-201A-612.

(1) **Aquatic life uses.** Aquatic life uses are designated using the following general categories. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state.

(a) **The categories for aquatic life uses are:**

(i) **Extraordinary quality** salmonid and other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(ii) **Excellent quality** salmonid and other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iii) **Good quality** salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iv) **Fair quality** salmonid and other fish migration.

(b) **General criteria.** General criteria that apply to aquatic life marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, temperature is measured as a 1-day maximum temperature (1-DMax). Table 210 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 210 (1)(c)**  
**Aquatic Life Temperature Criteria in Marine Water**

Category	Highest 1-DMax
<i>Extraordinary quality</i>	13°C (55.4°F)
<i>Excellent quality</i>	16°C (60.8°F)
<i>Good quality</i>	19°C (66.2°F)
<i>Fair quality</i>	22°C (71.6°F)

(i) When a water body's temperature is warmer than the criteria in Table 210 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:

(A) Incremental temperature increases resulting from individual point source activities must not, at any time, exceed 12/(T-2) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge); and

(B) Incremental temperature increases resulting from the combined effect of all nonpoint source activities in the water body must not, at any time, exceed 2.8°C (5.04°F).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ten years on average.

(iv) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(v) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this subsection or WAC 173-201A-612:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-DMax temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(vi) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** Except where noted, D.O. concentrations are measured as a 1-day minimum in milligrams per liter. Table 210 (1)(d) lists the D.O. criteria for each of the aquatic life use categories.

**Table 210 (1)(d)**  
**Aquatic Life Dissolved Oxygen Criteria in Marine Water**

Category	Lowest 1-Day Minimum
<i>Extraordinary quality</i>	7.0 mg/L
<i>Excellent quality</i>	6.0 mg/L
<i>Good quality</i>	5.0 mg/L
<i>Fair quality</i>	4.0 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 210 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ten years on average.

(iii) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 210 (1)(e) lists the one-day maximum turbidity allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(e)**  
**Aquatic Life Turbidity Criteria in Marine Water**

Category	NTUs
<i>Extraordinary quality</i>	Turbidity must not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Excellent quality</i>	Same as above.

Category	NTUs
<i>Good quality</i>	Turbidity must not exceed: • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Fair quality</i>	Same as above.

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

(f) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 210 (1)(f) lists the pH levels allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(f)**  
**Aquatic Life pH Criteria in Marine Water**

Use Category	pH Units
<i>Extraordinary quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.
<i>Excellent quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.5 units.

Use Category	pH Units
<i>Good quality</i>	Same as above.
<i>Fair quality</i>	pH must be within the range of 6.5 to 9.0 with a human-caused variation within the above range of less than 0.5 units.

**(2) Shellfish harvesting.**

(a) General criteria. General criteria that apply to shellfish harvesting uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Shellfish harvesting bacteria criteria.** To protect shellfish harvesting, fecal coliform organism levels must not exceed a geometric mean value of 14 colonies/100 mL, and not have more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 43 colonies/100 mL.

(i) Shellfish growing areas approved for unconditional harvest by the state department of health are fully supporting the shellfish harvest goals of this chapter, even when comparison with the criteria contained in this chapter suggest otherwise.

(ii) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a thirty-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed twelve months, and should have sample collection dates well distributed throughout the reporting period.

(iii) When determining compliance with the bacteria criteria in or around small sensitive areas, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iv) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water is being met.

(v) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Recreational uses.** The recreational uses are primary contact recreation and secondary contact recreation.

(a) **General criteria.** General criteria that apply to water contact uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 210 (3)(b) lists the bacteria criteria to protect water contact recreation in marine water.

**Table 210 (3)(b)**  
**Water Contact Recreation Bacteria Criteria in Marine Water**

Category	Bacteria Indicator
Primary Contact Recreation	Fecal coliform organism levels must not exceed a geometric mean value of 14 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding ((44)) 43 colonies/100 mL.
Secondary Contact Recreation	Enterococci organism levels must not exceed a geometric mean value of 70 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 208 colonies/100 mL.

(i) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a thirty-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed twelve months, and should have sample collection dates well distributed throughout the reporting period.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water is being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(4) **Miscellaneous uses.** The miscellaneous marine water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply in miscellaneous marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-230 Establishing lake nutrient criteria.** (1) The following table shall be used to aid in establishing nutrient criteria:

(Table 230(1)) The ecoregional and trophic-state action values for establishing nutrient criteria:

<b>Coast Range, Puget Lowlands, and Northern Rockies Ecoregions:</b>			
Trophic State	If Ambient TP ( $\mu\text{g/l}$ ) Range of Lake is:	Then criteria should be set at:	
Ultra-oligotrophic	0-4	4 or less	
Oligotrophic	>4-10	10 or less	
Lower mesotrophic	>10-20	20 or less	
	<u>Action value</u>		
	>20	...	lake specific study may be initiated.
<b>Cascades Ecoregion:</b>			
Trophic State	If Ambient TP ( $\mu\text{g/l}$ ) Range of Lake is:	Then criteria should be set at:	
Ultra-oligotrophic	0-4	4 or less	
Oligotrophic	>4-10	10 or less	
	<u>Action value</u>		
	>10	...	lake specific study may be initiated.
<b>Columbia Basin Ecoregion:</b>			
Trophic State	If Ambient TP ( $\mu\text{g/l}$ ) Range of Lake is:	Then criteria should be set at:	
Ultra-oligotrophic	0-4	4 or less	
Oligotrophic	>4-10	10 or less	
Lower mesotrophic	>10-20	20 or less	
Upper mesotrophic	>20-35	35 or less	
	<u>Action value</u>		
	>35	...	lake specific study may be initiated.

Lakes in the Willamette, East Cascade Foothills, or Blue Mountain ecoregions do not have recommended values and need to have lake-specific studies in order to receive criteria as described in subsection (3) of this section.

(2) The following actions are recommended if ambient monitoring of a lake shows the epilimnetic total phosphorus concentration, as shown in Table 1 of this section, is below the action value for an ecoregion:

(a) Determine trophic status from existing or newly gathered data. The recommended minimum sampling to determine trophic status is calculated as the mean of four or more samples collected from the epilimnion between June through September in one or more consecutive years. Sampling must be spread throughout the season.

(b) Propose criteria at or below the upper limit of the trophic state; or

(c) Conduct lake-specific study to determine and propose to adopt appropriate criteria as described in ((~~(e)~~)) subsection (3) of this ((~~subsection~~)) section.

(3) The following actions are recommended if ambient monitoring of a lake shows total phosphorus to exceed the action value for an ecoregion shown in Table 1 of this section or where recommended ecoregional action values do not exist:

(a) Conduct a lake-specific study to evaluate the characteristic uses of the lake. A lake-specific study may vary depending on the source or threat of impairment. Phytoplankton blooms, toxic phytoplankton, or excessive aquatic plants, are examples of various sources of impairment. The following are examples of quantitative measures that a study may describe: Total phosphorus, total nitrogen, chlorophyll-a, dissolved oxygen in the hypolimnion if thermally stratified, pH, hardness, or other measures of existing conditions and potential changes in any one of these parameters.

(b) Determine appropriate total phosphorus concentrations or other nutrient criteria to protect characteristic lake uses. If the existing total phosphorus concentration is protective of characteristic lake uses, then set criteria at existing total phosphorus concentration. If the existing total phosphorus concentration is not protective of the existing characteristic lake uses, then set criteria at a protective concentration. Proposals to adopt appropriate total phosphorus criteria to protect characteristic uses must be developed by considering technical information and stakeholder input as part of a public involvement process equivalent to the Administrative Procedure Act (chapter 34.05 RCW).

(c) Determine if the proposed total phosphorus criteria necessary to protect characteristic uses is achievable. If the recommended criterion is not achievable and if the characteristic use the criterion is intended to protect is not an existing use, then a higher criterion may be proposed in conformance with 40 CFR part 131.10.

(4) The department will consider proposed lake-specific nutrient criteria during any water quality standards rule making that follows development of a proposal. Adoption by rule formally establishes the criteria for that lake.

(5) Prioritization and investigation of lakes by the department will be initiated by listing problem lakes in a watershed needs assessment, and scheduled as part of the water quality program's watershed approach to pollution control. This prioritization will apply to lakes identified as warranting a criteria based on the results of a lake-specific study, to lakes warranting a lake-specific study for establishing criteria, and to lakes requiring restoration and pollution control measures due to exceedance of an established criterion. The adoption of nutrient criteria are generally not intended to apply to lakes or ponds with a surface area smaller than five acres; or to ponds wholly contained on private property owned and surrounded by a single landowner; and nutrients do not drain or leach from these lakes or private ponds to the detriment of other property owners or other water bodies; and do not impact designated uses in the lake. However, if the landowner proposes criteria the department may consider adoption.

(6) The department may not need to set a lake-specific criteria or further investigate a lake if existing water quality conditions are naturally poorer (higher TP) than the action value and uses have not been lost or degraded, per WAC 173-201A-260(1).

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-240 Toxic substances.** (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and characteristic beneficial uses of waters are being fully protected.

(3) The following criteria, found in Table 240(3), shall be applied to all surface waters of the state of Washington for the protection of aquatic life. The department may revise the following criteria on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria. Values are µg/L for all substances except Ammonia and Chloride which are mg/L:

Table 240(3)  
Toxics Substances Criteria

Substance	Freshwater		Marine Water	
	Acute	Chronic	Acute	Chronic
Aldrin/Dieldrin e	2.5a	0.0019b	0.71a	0.0019b
Ammonia	f,c	g,d	0.233h,c	0.035h,d
(un-ionized NH3) hh				
Arsenic dd	360.0c	190.0d	69.0c,ll	36.0d,cc,ll
Cadmium dd	i,c	j,d	42.0c	9.3d
Chlordane	2.4a	0.0043b	0.09a	0.004b
Chloride (Dissolved) k	860.0h,c	230.0h,d	-	-
Chlorine (Total Residual)	19.0c	11.0d	13.0c	7.5d
Chlorpyrifos	0.083c	0.041d	0.011c	0.0056d
Chromium (Hex) dd	15.0c,l,ii	10.0d,jj	1,100.0c,l,ll	50.0d,ll
Chromium (Tri) gg	m,c	n,d	-	-
Copper dd	o,c	p,d	4.8c,ll	3.1d,ll
Cyanide ee	22.0c	5.2d	1.0c,mm	d,mm
DDT (and metabolites)	1.1a	0.001b	0.13a	0.001b
Dieldrin/Aldrin e	2.5a	0.0019b	0.71a	0.0019b
Endosulfan	0.22a	0.056b	0.034a	0.0087b
Endrin	0.18a	0.0023b	0.037a	0.0023b
Heptachlor	0.52a	0.0038b	0.053a	0.0036b
Hexachlorocyclohexane (Lindane)	2.0a	0.08b	0.16a	-
Lead dd	q,c	r,d	210.0c,ll	8.1d,ll
Mercury s	2.1c,kk,dd	0.012d,ff	1.8c,ll,dd	0.025d,ff
Nickel dd	t,c	u,d	74.0c,ll	8.2d,ll
Parathion	0.065c	0.013d	-	-
Pentachlorophenol (PCP)	w,c	v,d	13.0c	7.9d
Polychlorinated				
Biphenyls (PCBs)	2.0b	0.014b	10.0b	0.030b
Selenium	20.0c,ff	5.0d,ff	290c,ll,dd	71.0d,x,ll,dd
Silver dd	y,a	-	1.9a,ll	-
Toxaphene	0.73c,z	0.0002d	0.21c,z	0.0002d
Zinc dd	aa,c	bb,d	90.0c,ll	81.0d,ll

## Notes to Table 240(3):

- a. An instantaneous concentration not to be exceeded at any time.
- b. A 24-hour average not to be exceeded.
- c. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- d. A 4-day average concentration not to be exceeded more than once every three years on the average.
- e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.
- f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

For salmonids present:

$$\frac{0.275}{1 + 10^{7.204-\text{pH}}} + \frac{39.0}{1 + 10^{((\text{pH}-7.204)) \text{ pH}-7.204}} \quad \text{pH} > 7.204$$

For salmonids absent:

$$\frac{0.411}{1 + 10^{7.204-\text{pH}}} + \frac{58.4}{1 + 10^{((\text{pH}-7.204)) \text{ pH}-7.204}} \quad \text{pH} < 7.204$$

g. Shall not exceed the numerical concentration calculated as follows:  
Unionized ammonia concentration for waters where salmonid habitat  
is an existing or designated use:

$$\begin{aligned} \text{FT} &= 10^{[0.03(20-T)]}; 0 \leq T \leq 15 \\ \text{FPH} &= 1; 8 \leq \text{pH} \leq 9 \\ \text{FPH} &= (1 + 10^{(7.4-\text{pH})}) \div 1.25; ((6)) 6.5 \leq \text{pH} \leq 8.0 \end{aligned}$$

$$0.80 \div (\text{FT})(\text{FPH})(\text{RATIO})$$

$$\text{where: RATIO} = 13.5; 7.7 \leq \text{pH} \leq 9$$

$$\begin{aligned} \text{RATIO} &= \\ &(20.25 \times 10^{(7.7-\text{pH})}) \div (1 + 10^{(7.4-\text{pH})}); 6.5 \leq \text{pH} \leq 7.7 \\ \text{FT} &= 1.4; 15 \leq T \leq 30 \end{aligned}$$

Total ammonia concentrations for waters where salmonid habitat is  
not an existing or designated use and other fish early life stages are  
absent:

$$((\text{Chronic criterion}) = \frac{0.0557}{1 + 10^{7.688-\text{pH}}} + \frac{2.487}{1 + 10^{\text{pH}-7.688}}) \times (1.45 \times 10^{0.028(25-A)})$$

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688-\text{pH}}} + \frac{2.487}{1 + 10^{\text{pH}-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

$$\text{where: A} = \text{the greater of either T (temperature in degrees Celsius)} \\ \text{or 7.}$$

should not exceed 2.5 times the chronic criterion.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period

Total ammonia concentration for waters where salmonid habitat is  
not an existing or designated use and other fish early life stages are  
present:

$$((\text{Chronic criterion}) = \frac{0.0557}{1 + 10^{7.688-\text{pH}}} + \frac{2.487}{1 + 10^{\text{pH}-7.688}}) \quad (B)$$

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688-\text{pH}}} + \frac{2.487}{1 + 10^{\text{pH}-7.688}} \right) \times B$$

$$\text{where: B} = \text{the lower of either 2.85, or } 1.45 \times 10^{0.028 \times (25-T)}. T = \text{temperature in degrees Celsius.}$$

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day

period should not exceed 2.5 times the chronic criterion.

h. Measured in milligrams per liter rather than micrograms per liter.

- i.  $\leq (0.944)(e(1.128[\ln(\text{hardness})]-3.828))$  at hardness =100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$ .
- j.  $\leq (0.909)(e(0.7852[\ln(\text{hardness})]-3.490))$  at hardness =100. Conversions factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$ .
- k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
- m.  $\leq (0.316)e^{(0.8190[\ln(\text{hardness})] + 3.688)}$
- n.  $\leq (0.860)e^{(0.8190[\ln(\text{hardness})] + 1.561)}$
- o.  $\leq (0.960)(e^{(0.9422[\ln(\text{hardness})] - 1.464)})$
- p.  $\leq (0.960)(e^{(0.8545[\ln(\text{hardness})] - 1.465)})$
- q.  $\leq (0.791)(e^{(1.273[\ln(\text{hardness})] - 1.460)})$  at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$ .
- r.  $\leq (0.791)(e^{(1.273[\ln(\text{hardness})] - 4.705)})$  at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$ .
- s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- t.  $\leq (0.998)(e^{(0.8460[\ln(\text{hardness})] + 3.3612)})$
- u.  $\leq (0.997)(e^{(0.8460[\ln(\text{hardness})] + 1.1645)})$
- v.  $\leq e^{[1.005(\text{pH}) - 5.290]}$
- w.  $\leq e^{[1.005(\text{pH}) - 4.830]}$
- x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/l in salt water.
- y.  $\leq (0.85)(e^{(1.72[\ln(\text{hardness})] - 6.52)})$
- z. Channel Catfish may be more acutely sensitive.
- aa.  $\leq (0.978)(e^{(0.8473[\ln(\text{hardness})] + 0.8604)})$
- bb.  $\leq (0.986)(e^{(0.8473[\ln(\text{hardness})] + 0.7614)})$
- cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria, however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.
- dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.

- ee. The criteria for cyanide is based on the weak acid dissociable method in the 17th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).
- ff. These criteria are based on the total-recoverable fraction of the metal.
- gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- hh. The listed fresh water criteria are based on unionized or total ammonia concentrations, while those for marine water are based on total ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.
- ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.
- jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.
- kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.
- ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

- mm. The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

(4) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (3) of this section.

(5) Concentrations of toxic, and other substances with toxic propensities not listed in subsection (3) of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate. Human health-based water quality criteria used by the state are contained in 40 CFR 131.36 (known as the National Toxics Rule).

(6) Risk-based criteria for carcinogenic substances shall be selected such that the upper-bound excess cancer risk is less than or equal to one in one million.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-410 Short-term modifications.** The criteria and special conditions established in WAC 173-200 through 173-201A-260, 173-201A-320, 173-201A-602 and 173-201A-612 may be modified for a specific water body on a short-term basis (e.g., actual periods of non-attainment would generally be limited to hours or days rather than weeks or months) when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest, even though such activities may result in a temporary reduction of water quality conditions.

(1) A short-term modification will:

(a) Be authorized in writing by the department, and conditioned, timed, and restricted in a manner that will minimize degradation of water quality, existing uses, and designated uses;

(b) Be valid for the duration of the activity requiring modification of the criteria and special conditions in WAC 173-200 through 173-201A-260, 173-201A-602 or 173-201A-612, as determined by the department;

(c) Allow degradation of water quality if the degradation does not significantly interfere with or become injurious to existing or designated water uses or cause long-term harm to the environment; and

(d) In no way lessen or remove the proponent's obligations and liabilities under other federal, state, and local rules and regulations.

(2) The department may authorize a longer duration where the activity is part of an ongoing or long-term operation and maintenance plan, integrated pest or noxious weed management plan, water body or watershed management plan, or restoration plan. Such a plan must be developed through a public involvement process consistent with the Administrative Procedure Act (chapter 34.05 RCW) and be in compliance with SEPA, chapter 43.21C RCW, in which case the standards may be modified for the duration of the plan, or for five years, whichever is less. Such long-term plans may be renewed by the department after providing for another opportunity for public and intergovernmental involvement and review.

(3) The department may allow a major watershed restoration activity that will provide greater benefits to the health of the aquatic system in the long-term (examples include removing dams or reconnecting meander channels) that, in the short term, may cause significant impacts to existing or designated uses as a result of the activities to restore the water body and environmental conditions. Authorization will be given in accordance with subsection (2) of this section.

(4) A short-term modification may be issued in writing by the director or his/her designee to an individual or entity proposing the aquatic application of pesticides, including but not limited to those used for control of federally or state listed noxious and invasive species, and excess populations of native aquatic plants, mosquitoes, burrowing shrimp, and fish, subject to the following terms and conditions:

(a) A request for a short-term modification shall be made to the department on forms supplied by the department. Such request shall be made at least thirty days prior to initiation of the proposed activity, and after the project proponent has

complied with the requirements of the State Environmental Policy Act (SEPA);

(b) Appropriate public notice as determined and prescribed by the director or his/her designee shall be given, identifying the pesticide, applicator, location where the pesticide will be applied, proposed timing and method of application, and any water use restrictions specified in USEPA label provisions;

(c) The pesticide application shall be made at times so as to:

(i) Minimize public water use restrictions during weekends; and

(ii) Avoid public water use restrictions during the opening week of fishing season, Memorial Day weekend, Independence Day weekend, and Labor Day weekend;

(d) Any additional conditions as may be prescribed by the director or his/her designee.

(5) A short-term modification may be issued for the control or eradication of noxious weeds identified as such in accordance with the state noxious weed control law, chapter 17.10 RCW, and Control of spartina and purple loosestrife, chapter 17.26 RCW. Short-term modifications for noxious weed control shall be included in a water quality permit issued in accordance with RCW 90.48.445, and the following requirements:

(a) The department may issue water quality permits for noxious weed control to the Washington state department of agriculture (WSDA) for the purposes of coordinating and conducting noxious weed control activities consistent with WSDA's responsibilities under chapters 17.10 and 17.26 RCW. Coordination may include noxious weed control activities identified in a WSDA integrated noxious weed management plan and conducted by individual landowners or land managers.

(b) The department may also issue water quality permits to individual landowners or land managers for noxious weed control activities where such activities are not covered by a WSDA integrated noxious weed management plan.

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-600 Use designations—Fresh waters.** (1) All surface waters of the state not named in Table 602 are to be protected for the designated uses of: ~~((Salmon and trout))~~ Salmonid spawning, ~~((noncore))~~ rearing, and migration; primary contact recreation; domestic, industrial, and agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values.

(a) Additionally, the following waters are also to be protected for the designated uses of ~~((salmon and trout spawning, core rearing, and migration))~~: Core summer salmonid habitat; and extraordinary primary contact recreation:

(i) All surface waters lying within national parks, national forests, and/or wilderness areas;

(ii) All lakes and all feeder streams to lakes (reservoirs with a mean detention time greater than fifteen days are to be treated as a lake for use designation);

(iii) All surface waters that are tributaries to waters designated ((~~salmon and trout spawning, core rearing, and migration~~) **core summer salmonid habitat**; or extraordinary primary contact recreation; and

(iv) All fresh surface waters that are tributaries to extraordinary quality marine waters (WAC 173-201A-610 through 173-201A-612).

(2) The water quality standards for surface waters for the state of Washington do not apply to segments of waters ((listed in Table 602)) that are on Indian reservations.

Table 600 (Key to Table 602)

Abbreviation	General Description
<b>Aquatic Life Uses:</b>	(see WAC 173-201A-200(1))
Char Spawning/Rearing	(( <u>Char</u> . For the protection of spawning and early tributary rearing (e.g., first year juveniles) of native char (bull trout and Dolly Varden), and other associated aquatic life.)) <b>Char spawning and rearing.</b> The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

Table 600 (Key to Table 602)

Abbreviation	General Description
Core ((Salmon/Trout)) Summer Habitat	(( <del>Salmon and trout spawning, core rearing, and migration</del> . For the protection of spawning, core rearing, and migration of salmon and trout, and other associated aquatic life.)) <b>Core summer salmonid habitat.</b> The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.
((Noncore Salmon/Trout)) Spawning/Rearing	(( <del>Salmon and trout spawning, noncore rearing, and migration</del> . For the protection of spawning, noncore rearing, and migration of salmon and trout, and other associated aquatic life.)) <b>Salmonid spawning, rearing, and migration.</b> The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

**Table 600 (Key to Table 602)**

<b>Abbreviation</b>	<b>General Description</b>
((Salmon/TROUT)) Rearing/Migration Only	<b>((Salmon and trout rearing and migration only.)</b> For the protection of rearing and migration of salmon and trout, and other associated aquatic life.)) <b>Salmonid rearing and migration only.</b> The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).
Redband Trout	<b>Non-anadromous interior redband trout.</b> For the protection of waters where the only trout species is a non-anadromous form of self-reproducing interior red-band trout ( <i>O. mykis</i> ), and other associated aquatic life.
Warm Water Species	<b>Indigenous warm water species.</b> For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redside shiner, chiselmouth, sucker, and northern pikeminnow.
<b>Recreational Uses:</b> (see WAC 173-201A-200(2))	
Extraordinary Primary Cont.	Extraordinary quality primary contact waters. Waters providing extraordinary protection against waterborne disease or that serve as tributaries to extraordinary quality shellfish harvesting areas.
Primary Cont.	Primary contact recreation.
Secondary Cont.	Secondary contact recreation.
<b>Water Supply Uses:</b> (see WAC 173-201A-200(3))	
Domestic Water	Domestic water supply.
Industrial Water	Industrial water supply.
Agricultural Water	Agricultural water supply.
Stock Water	Stock watering.

**Table 600 (Key to Table 602)**

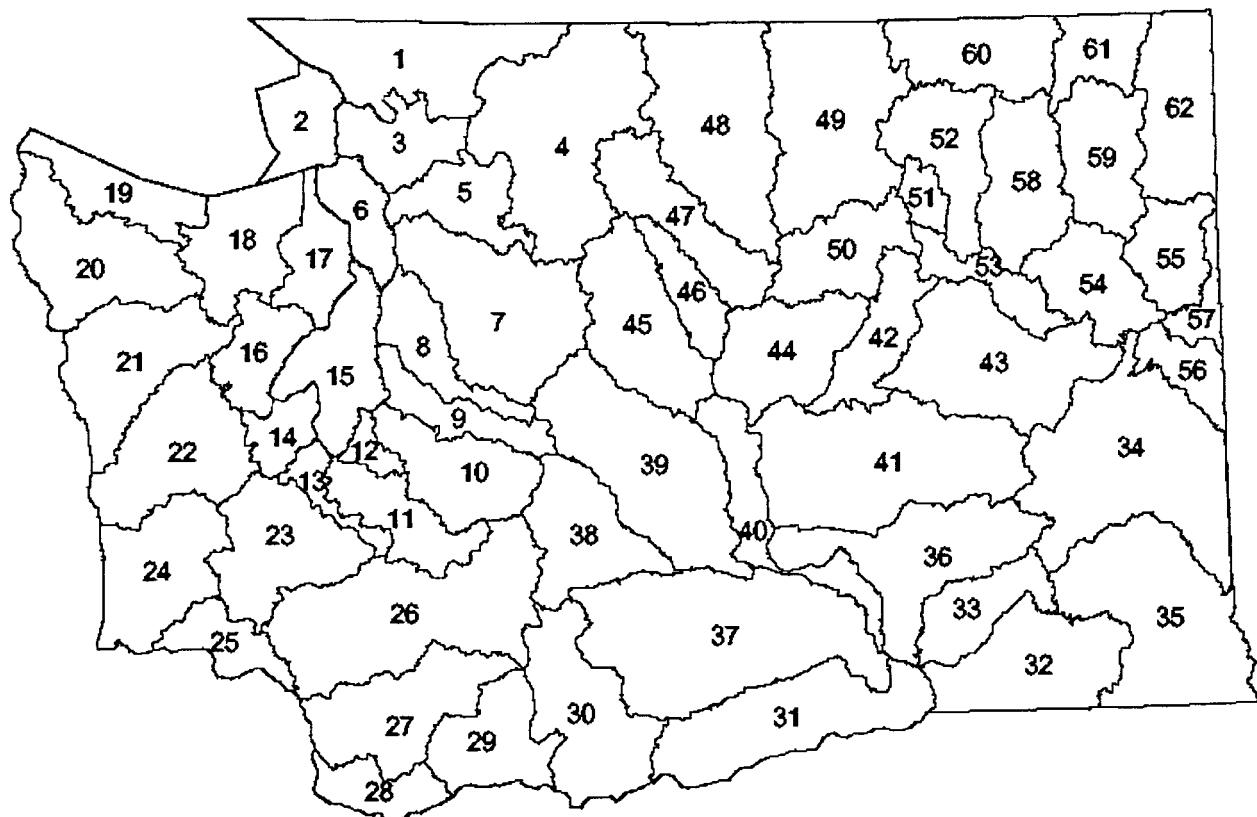
<b>Abbreviation</b>	<b>General Description</b>
<b>Miscellaneous Uses:</b>	(see WAC 173-201A-200(4))
Wildlife Habitat	Wildlife habitat.
Harvesting	Fish harvesting.
Commerce/Navigation	Commerce and navigation.
Boating	Boating.
Aesthetics	Aesthetic values.

**AMENDATORY SECTION** (Amending Order 02-14, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-602 Table 602—Use designations for fresh waters by water resource inventory area (WRIA).** (1) Table 602 lists uses for fresh waters. All surface waters of the state have designated uses assigned to them for protection under this chapter. Table 602 lists use designations for specific fresh waters. Fresh waters not assigned designated uses in Table 602 have their designated uses assigned in accordance with WAC 173-201A-600 and 173-201A-260(3). In Table 602, the Columbia River is listed first, followed by other water bodies listed by WRIA. Only the uses with the most stringent criteria are listed. The criteria notes in Table 602 take precedence over the criteria in WAC 173-201A-200 for same parameter.

(2) Table 602 is necessary to determine and fully comply with the requirements of this chapter. If you are viewing a paper copy of the rule from the office of the code reviser or are using their web site, Table 602 may be missing (it will instead say "place illustration here"). In this situation, you may view Table 602 at the department of ecology's web site at [www.ecy.wa.gov](http://www.ecy.wa.gov), or request a paper copy of the rule with Table 602 from the department of ecology or the office of the code reviser.

Illustration 1: Water Resources Inventory Area Map



Key:			
1. Nooksack	21. Queets/Quinault	41. Lower Crab	61. Upper Lake Roosevelt
2. San Juan	22. Lower Chehalis	42. Grand Coulee	62. Pend Oreille
3. Lower Skagit/Samish	23. Upper Chehalis	43. Upper Crab/Wilson	
4. Upper Skagit	24. Willapa	44. Moses Coulee	
5. Stillaguamish	25. Grays/Elochoman	45. Wenatchee	
6. Island	26. Cowlitz	46. Entiat	
7. Snohomish	27. Lewis	47. Chelan	
8. Cedar/Sammamish	28. Salmon/Washougal	48. Methow	
9. Duwamish/Green	29. Wind/White Salmon	49. Okanogan	
10. Puyallup/White	30. Klickitat	50. Foster	
11. Nisqually	31. Rock/Glade	51. Nespelem	
12. Chambers/Clover	32. Walla Walla	52. Sanpoil	
13. Deschutes	33. Lower Snake	53. Lower Lake Roosevelt	
14. Kennedy/Goldsborough	34. Palouse	54. Lower Spokane	
15. Kitsap	35. Middle Snake	55. Little Spokane	
16. Skokomish/ Dosewallips	36. Esquatzel Coulee	56. Hangman	
17. Quilcene/Snow	37. Lower Yakima	57. Middle Spokane	
18. Elwha/Dungeness	38. Naches	58. Middle Lake Roosevelt	
19. Lyre/Hoko	39. Upper Yakima	59. Colville	
20. Soleduck/Hoh	40. Alkaki/Squilchuck	60. Kettle	

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Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Breeding	Redband Trout	Warm Water Species	Ex Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Harvesting	Commerce/NavigatioN	Boating	Aesthetics	
<b>COLUMBIA RIVER</b>																	
Columbia River from mouth to the Washington-Oregon border (river mile 309.3). <sup>1</sup>																	
Columbia River from Washington-Oregon border (river mile 309.3) to Grand Coulee Dam (river mile 596.6). <sup>2,3</sup>																	
Columbia River from Grand Coulee Dam (river mile 596.6) to Canadian border (river mile 745.0).																	
<b>Notes for Columbia River:</b>																	
1. Temperature shall not exceed a 1-day maximum (1-DMax) of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to any single source or 1.1°C due to all such activities combined. Dissolved oxygen shall exceed 90 percent of saturation. Special condition - special fish passage exemption as described in WAC 173-201A-200 (1)(f).																	
2. From Washington-Oregon border (river mile 309.3) to Priest Rapids Dam (river mile 397.1). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .																	
3. From Washington-Oregon border (river mile 309.3) to Grand Coulee Dam (river mile 596.6). Special condition - special fish passage exemption as described in WAC 173-201A-200 (1)(f).																	
<b>WRIA 1 - Nooksack</b>																	
Chilliwack River and Little Chilliwack River: All waters (including tributaries) above the junction.																	
Nooksack River and North Fork Nooksack River from mouth to Maple Creek (river mile 49.7).																	
Nooksack River, North Fork, from Maple Creek (river mile 49.7) to unnamed creek at longitude -122.0508 and latitude 48.9222 (near Boulder Creek).																	
Nooksack River, North Fork, and all tributaries above unnamed creek at longitude -122.0508 and latitude 48.9222 (near Boulder Creek).																	
Nooksack River, Middle Fork, and all tributaries.																	

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TABLE 602	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Nooksack River, South Fork, from mouth to Skookum Creek (river mile 14.3).	✓	✓	✓	✓
Nooksack River, South Fork, from Skookum Creek (river mile 14.3) to Fobes Creek.	✓	✓	✓	✓
Nooksack River, South Fork, and all tributaries above the junction with Fobes Creek.	✓	✓	✓	✓
Sleissa Creek and all tributaries south of Canadian border.	✓	✓	✓	✓
Skookum Creek and all tributaries.	✓	✓	✓	✓
Sumas River from Canadian border (river mile 12) to headwaters (river mile 23).	✓	✓	✓	✓
<b>WRIA 2 San Juan</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 3 Lower Skagit-Samish</b>				
Nookachamps Creek, East Fork, and unnamed creek at longitude -122.1657 and latitude 48.4103; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Skagit River from mouth to Skiyou Slough-lower end (river mile 25.6).	✓	✓	✓	✓
Skagit River and tributaries from Skiyou Slough-lower end, (river mile 25.6) to the boundary of WRIA 3 and 4, except the other waters listed for this WRIA. <sup>1</sup>	✓	✓	✓	✓
Walker Creek and unnamed creek at longitude -122.1639 and latitude 48.3813; All waters (including tributaries) above the junction.	✓	✓	✓	✓
<b>Notes for WRIA 3:</b>				
1. Skagit River (Gorge by-pass reach) from Gorge Dam (river mile 96.6) to Gorge Powerhouse (river mile 94.2). Temperature shall not exceed a 1-DMax of 21°C due to human activities. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
<b>WRIA 4 Upper Skagit</b>				
Bacon Creek and all tributaries.	✓	✓	✓	✓
Baker Lake and all tributaries.	✓	✓	✓	✓
Bear Creek and the unnamed outlet creek of Blue Lake: All waters (including tributaries) above the junction.	✓	✓	✓	✓

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**TABLE 602****Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)**

Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Remaining	Redband Trout	Warm Water Species	Ex Primary Cont	Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Harvesting	Commerce/Navigational	Boating	Aesthetics
Recreational Uses	Water Supply Uses	Misc. Uses															
Thunder Creek and all tributaries.	✓					✓									✓	✓	✓
White Chuck River and all tributaries.	✓					✓									✓	✓	✓
<b>Notes for WRIA 4:</b>																	
1. Skagit River (Gorge bypass reach) from Gorge Dam (river mile 96.6) to Gorge Powerhouse (river mile 94.2). Temperature shall not exceed a 1-DMax of 21°C due to human action. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .																	

**WRIA 5 Stillaguamish**

Brooks Creek and the unnamed tributary at longitude -121.9031 and latitude 48.2967: All waters (including tributaries) above the junction.	✓																
Canyon Creek's unnamed tributaries at longitude -121.9635 and latitude 48.1461.	✓																
Canyon Creek, North Fork, and South Fork Canyon Creek: All waters (including tributaries) above the junction.		✓															
Crane Creek and the unnamed tributary at longitude -122.1030 and latitude 48.3315: All waters (including tributaries) above the junction.		✓															
Crane Creek's unnamed tributaries at longitude -122.0988 and latitude 48.3332.	✓																
Cub Creek and the unnamed tributary at longitude -121.9376 and latitude 48.1655: All waters (including tributaries) above the junction.		✓															
Deer Creek and the unnamed tributary at longitude -121.9565 and latitude 48.3195: All waters (including tributaries) above the junction.		✓															
Dicks Creek and unnamed outlet of Myrtle Lake at longitude -121.8129 and 48.3187: All waters (including tributaries) above the junction.		✓															
Jim Creek and Little Jim Creek: All waters (including tributaries) above the junction.	✓																
Pilchuck Creek and Bear Creek: All waters (including tributaries) above the junction.		✓															
Pilchuck Creek's unnamed tributaries at longitude -122.1305 and latitude 48.3104.		✓															
Stillaguamish River from mouth to north and south forks (river mile 17.8).		✓															
Stillaguamish River, North Fork, from mouth to Boulder River.		✓															

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TABLE 602	Aquatic Life Uses	Recreational Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)			
Char			
Core Salmon/TROUT			
Non-Core Salmon/TROUT			
Salmon/TROUT Rearing			
Redband Trout			
Warm Water Species			
Ex Primary Cont			
Primary Cont			
Secondary Cont			
Domestic Water			
Industrial Water			
Agricultural Water			
Stock Water			
Wildlife Habitat			
Habitat			
Commerce/Navigation			
Boating			
Aesthetics			

**WRIA 6 Island**

There are no specific waterbody entries for this WRIA.

**WRIA 7 Snohomish**

Beckler River and Rapid River: All waters (including tributaries) above the junction.	✓
Cripple Creek and all tributaries.	✓
Foss River, West Fork, and East Fork Foss River: All waters (including tributaries) above the junction.	✓
Kelly Creek and all tributaries.	✓
Miller River, East Fork, and West Fork Miller River: All waters (including tributaries) above the junction.	✓
North Fork Creek and unnamed creek at longitude -121.8231 and latitude 47.7409: All waters (including tributaries) above the junction.	✓

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TABLE 602	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Pilchuck River from city of Snohomish Waterworks Dam (river mile 26.8) to Boulder Creek.	✓	✓		
Pilchuck River and Boulder Creek: All waters (including tributaries) above the junction.	✓	✓		
Pratt River and all tributaries.	✓	✓		
Skykomish River from mouth to May Creek (above Gold Bar at river mile 41.2).	✓	✓		
Skykomish River above May Creek (above Gold Bar at river mile 41.2).	✓	✓		
Skykomish River, North Fork, and Salmon Creek: All waters (including tributaries) above the junction.	✓	✓		
Snohomish River from mouth and east of longitude 122°13'40" W upstream to latitude 47°56'30" N (southern tip of Ebey Island at river mile 8.1). <sup>1</sup>	✓	✓		
Snohomish River upstream from latitude 47°56'30" N (southern tip of Ebey Island river mile 8.1) to confluence with Skykomish and Snoqualmie River (river mile 20.5).	✓	✓		
Snoqualmie River and tributaries from mouth to west boundary of Twin Falls State Park on south fork (river mile 9.1).	✓	✓		
Snoqualmie River, South Fork, from west boundary of Twin Falls State Park (river mile 9.1) to headwaters.	✓	✓		
Snoqualmie River, North Fork, from mouth to Sunday Creek.	✓	✓		
Snoqualmie River, North Fork, and Sunday Creek: All waters (including tributaries) above the junction.	✓	✓		
Snoqualmie River, Middle Fork, from mouth to Dingford Creek.	✓	✓		
Snoqualmie River, Middle Fork, and Dingford Creek: All waters (including tributaries) above the junction.	✓	✓		
Snoqualmie River's Middle Fork's unnamed tributaries at longitude -121.5629 and latitude 47.5389.	✓	✓		
Sultan River from mouth to Chaplain Creek (river mile 5.9).	✓	✓		
Sultan River and tributaries from Chaplain Creek (river mile 5.9) to headwaters. <sup>2</sup>	✓	✓		

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TABLE 602	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
<b>Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)</b>				
Taylor River and all tributaries.	✓			
Tolt River, North Fork, and unnamed creek at longitude -121.7775 and latitude 47.7183: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Tolt River, South Fork, and tributaries from mouth to west boundary of Sec. 31-T26N-R9E (river mile 6.9).	✓	✓	✓	✓
Tolt River, South Fork, and tributaries from west boundary of Sec. 31-T26N-R9E (river mile 6.9) to headwaters, except for the waters specifically listed in this table: South Fork Tolt River and South Fork Tolt River's unnamed tributaries. <sup>3</sup>	✓	✓	✓	✓
Tolt River, South Fork, and unnamed creek at longitude -121.7392 and latitude 47.6925: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Tolt River's South Fork's unnamed tributaries at longitude -121.7856 and latitude 47.6689.	✓	✓	✓	✓
Trout Creek and all tributaries.	✓	✓	✓	✓
Tye River and Deception Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
<b>Notes for WRIA 7:</b>				
1. Fecal coliform organism levels shall both not exceed a geometric mean value of 200 colonies/100 mL and not have more than 10 percent of the samples obtained for calculating the mean value exceeding 400 colonies/100 mL.				
2. No waste discharge will be permitted above city of Everett Diversion Dam (river mile 9.4).				
3. No waste discharge will be permitted for the South Fork Tolt River and tributaries from west boundary of Sec. 31-T26N-R9E (river mile 6.9) to headwaters.				
<b>WRIA 8 Cedar-Sammamish</b>				
Cedar River from Lake Washington to the Maplewood Bridge (river mile 4.1).	✓	✓	✓	✓
Cedar River and tributaries from the Maplewood Bridge (river mile 4.1) to Landsburg Dam (river mile 21.6).	✓	✓	✓	✓
Cedar River and tributaries from Landsburg Dam (river mile 21.6) to Chester Morse Lake. <sup>1</sup>	✓	✓	✓	✓

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Warm Water Species	Ex Primary Cont	Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Habitat	Commerce/Navigagation	Boating	Aesthetics
Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses												
Cedar River at Chester Morse Lake and all tributaries. <sup>2</sup>	✓		✓												
Holler Creek and the unnamed tributary at longitude -121.9496 and latitude 47.4581: All waters (including tributaries) above the junction.	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Issaquah Creek.		✓			✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Lake Washington Ship Canal from Government Locks (river mile 1.0) to Lake Washington (river mile 8.6). <sup>3</sup>		✓			✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Notes for WRIA 8:</b>															
1. No waste discharge will be permitted.															
2. No waste discharge will be permitted.															
3. Salinity shall not exceed one part per thousand (1.0 ppt) at any point or depth along a line that transects the ship canal at the University Bridge (river mile 6.1).															

**WRIA 9 Duwamish-Green**

Duwamish River from mouth south of a line bearing 254° true from the NW corner of berth 3, terminal No. 37 to the Black River (river mile 11.0) (Duwamish River continues as the Green River above the Black River).

Green River from Black River (river mile 11.0 and point where Duwamish River continues as the Green River) to west boundary of Sec. 27-T21N-R6E (west boundary of Flaming Geyser State Park at river mile 42.3).

Green River from west boundary of Sec. 27-T21N-R6E (west boundary of Flaming Geyser State Park, river mile 42.3) to west boundary of Sec. 13-T21N-R7E (river mile 59.1).

Green River and tributaries from west boundary of Sec. 13-T21N-R7E (river mile 59.1) to headwaters, except for the waters specifically listed in this table: Green River and Sunday Creek, and Smay Creek.<sup>1</sup>

Green River and Sunday Creek: All waters (including tributaries) above the junction.<sup>1</sup>  
Smay Creek and West Fork Smay Creek: All waters (including tributaries) above the junction.<sup>1</sup>

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Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Notes for WRIA 9:				
1. No waste discharge will be permitted for the Green River and tributaries (King County) from west boundary of Sec. 13-T21N-R7E (river mile 59.1) to headwaters.				
<b>WRIA 10 Puyallup-White</b>				
Carbon River and Evans Creek: All waters (including tributaries) above the junction, except those waters in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Carbon River and Evans Creek: All waters (including tributaries) above the junction that are in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Clearwater River and Milky Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Mowich River and all tributaries.	✓	✓	✓	✓
Puyallup River from mouth to river mile 1.0.	✓	✓	✓	✓
Puyallup River from river mile 1.0 to Kings Creek (river mile 31.6).	✓	✓	✓	✓
Puyallup River from Kings Creek (river mile 31.6) to Deer Creek.	✓	✓	✓	✓
Puyallup River and Deer Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Puyallup River's unnamed tributaries at longitude -121.9903 and latitude 46.8790 (upstream of Niesson Creek).	✓	✓	✓	✓
South Prairie Creek and all tributaries above the Kepka Fishing Pond, except those waters in or above the Snoqualmie National Forest.	✓	✓	✓	✓
South Prairie Creek and all tributaries above the Kepka Fishing Pond that are in or above the Snoqualmie National Forest.	✓	✓	✓	✓
Voight Creek and Bear Creek: All waters (including tributaries) above the junction, except those waters in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Voight Creek and Bear Creek: All waters (including tributaries) above the junction that are in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
White River from Mud Mountain Dam (river mile 27.1) to Huckleberry Creek.	✓	✓	✓	✓

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	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses	Char														
					Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Rearing	Redband Trout	Warm Water Species	Ex Primary Comt	Primay Comt	Secondary Comt	Domesitic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Harvesting	Commerce/Navigatio
White River and Huckleberry Creek: All waters (including tributaries) above the junction.	✓																		
White River, West Fork, and Viola Creek: All waters (including tributaries) above the junction.	✓																		
Wilkeson Creek and Gale Creek: All waters (including tributaries) above the junction, except those waters in or above the Snoqualmie National Forest.	✓																		
Wilkeson Creek and Gale Creek: All waters (including tributaries) above the junction that are in or above the Snoqualmie National Forest.	✓																		
<b>WRIA 11 Nisqually</b>																			
Big Creek and all tributaries.	✓																		
Copper Creek and all tributaries.	✓																		
East Creek and all tributaries.	✓																		
Little Nisqually River and all tributaries.	✓																		
Mashel River and Little Mashel River: All waters (including tributaries) above the junction.	✓																		
Mineral Creek and all tributaries.	✓																		
Nisqually River from mouth to Alder Dam (river mile 44.2).	✓																		
Nisqually River from Alder Dam (river mile 44.2) to Tahoma Creek.	✓																		
Nisqually River and Tahoma Creek: All waters (including tributaries) above the junction.	✓																		
<b>WRIA 12 Chambers-Clover</b>																			
Clover Creek from outlet of Lake Spanaway to inlet of Lake Steilacoom.																			
<b>WRIA 13 Deschutes</b>																			
Deschutes River from mouth to boundary of Snoqualmie National Forest (river mile 48.2).																			

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TABLE 602	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Deschutes River from boundary of Snoqualmie National Forest (river mile 48.2) to headwaters.		✓		✓
<b>WRIA 14 Kennedy-Goldsbrough</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 15 Kitsap</b>				
Union River and tributaries from Bremerton Waterworks Dam (river mile 6.9) to headwaters. <sup>1</sup>		✓		✓
<b>Notes for WRIA 15:</b>				
1. No waste discharge will be permitted.				
<b>WRIA 16 Skokomish-Dosewallips</b>				
Brown Creek and the unnamed tributary at longitude -123.2857 and latitude 47.4264: All waters (including tributaries) above the junction.	✓			✓
Dosewallips River and tributaries.	✓			✓
Duckabush River and tributaries.	✓			✓
Hamma Hamma River and tributaries.	✓			✓
Lebar Creek and the unnamed tributary at longitude -123.3087 and latitude 47.4416: All waters (including tributaries) above the junction.	✓			✓
Rock Creek and the unnamed tributary at longitude -123.3496 and latitude 47.3894: All waters (including tributaries) above the junction.	✓			✓
Skokomish River and tributaries, except for the waters specifically listed in this table: Brown Creek, Lebar Creek, Rock Creek, North Fork Skokomish River, South Fork Skokomish River, and Vance Creek.				✓
Skokomish River, North Fork, and all tributaries above Lake Cushman Upper Dam.	✓			✓
Skokomish River, South Fork, and Cedar Creek: All waters (including tributaries) above the junction.	✓			✓
Vance Creek and Cabin Creek all waters above the junction.	✓			✓

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TABLE 602

TABLE 602		WRIA 17 Quilcene-Snow		WRIA 18 Elwha-Dungeness			
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)		Big Quilcene River and tributaries.		Boulder Creek and Deep Creek: All waters (including tributaries) above the junction.		Elwha River and tributaries from mouth to Godkin Creek, except for the waters specifically listed in this table: Boulder Creek, Cat Creek, Goldie River, Griff Creek, Hayes River, Hughes Creek, Lillian River, Little River, Long Creek, Lost River, and Wolf Creek.	
Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses			
Core Salmon/TROUT	✓	✓	✓	✓	✓	✓	✓
Non-Core Salmon/TROUT	✓	✓	✓	✓	✓	✓	✓
Warm WATER Species	✓	✓	✓	✓	✓	✓	✓
Redband Trout	✓	✓	✓	✓	✓	✓	✓
Ex Primary Comt	✓	✓	✓	✓	✓	✓	✓
Primary Comt	✓	✓	✓	✓	✓	✓	✓
Secondary Comt	✓	✓	✓	✓	✓	✓	✓
Domestic Water	✓	✓	✓	✓	✓	✓	✓
Industrial Water	✓	✓	✓	✓	✓	✓	✓
Agricultural Water	✓	✓	✓	✓	✓	✓	✓
Stock Water	✓	✓	✓	✓	✓	✓	✓
Wildlife Habitat	✓	✓	✓	✓	✓	✓	✓
Harvesting	✓	✓	✓	✓	✓	✓	✓
Commerce/NavigatioN	✓	✓	✓	✓	✓	✓	✓
Boating	✓	✓	✓	✓	✓	✓	✓
Aesthetics	✓	✓	✓	✓	✓	✓	✓

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Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Warm Water Species	Ex Primary Cont	Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Hunting	Commerce/Navigational	Boating	Aesthetics	Misc. Uses		
																Recreational Uses	Water Supply Uses	
Lost River and all tributaries.																	✓	✓
Wolf Creek and the unnamed tributary at longitude -123.5374 and latitude 47.9654; All waters (including tributaries) above the junction.	✓																✓	✓
<b>WRIA 19 Lyre-Hoko</b>																		
There are no specific waterbody entries for this WRIA.																		
<b>WRIA 20 Soleduc</b>																		
Dickey River.																	✓	✓
Hoh River and tributaries from mouth to Mineral Creek, except for the waters specifically listed in this table: Mount Tom Creek and South Fork Hoh River.		✓															✓	✓
Hoh River and all tributaries above Mineral Creek.			✓														✓	✓
Hoh River, South Fork, and the unnamed tributary at longitude -123.9420 and latitude 47.7916; All waters (including tributaries) above the junction.	✓			✓													✓	✓
Mount Tom Creek and the unnamed tributary at longitude -123.8389 and latitude 47.8259; All waters (including tributaries) above the junction.				✓													✓	✓
Quillayute River.					✓												✓	✓
Soleduck River and tributaries from mouth to Canyon Creek.		✓				✓											✓	✓
Soleduck River and all tributaries above Canyon Creek.			✓				✓										✓	✓
<b>WRIA 21 Queets-Quinault</b>																		
Clearwater Creek and the unnamed tributary at longitude -124.0361 and latitude 47.7270; All waters (including tributaries) above the junction.	✓						✓										✓	✓
Graves Creek and Litchy Creek; All waters (including tributaries) above the junction.		✓						✓									✓	✓
Kunamakst Creek and the unnamed tributary at longitude -124.0771 and latitude 17.7285; All waters (including tributaries) above the junction.			✓						✓								✓	✓
Matherly Creek and the unnamed tributary at longitude -123.9538 and latitude 47.5592; All waters (including tributaries) above the junction.				✓						✓							✓	✓

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**TABLE 602**  
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Queets River and tributaries from mouth to the unnamed tributary at longitude -123.7864 and latitude 47.6951, except for the waters specifically listed in this table: Middle Fork Salmon River, Matheny Creek, Sams River, and Tshlelshy Creek.				
Queets River and the unnamed tributary at longitude -123.7864 and latitude 47.6951: All waters (including tributaries) above the junction.				
Quinault River and tributaries from mouth to the unnamed tributary at longitude -123.5450 and latitude 47.5960 except for all waters above the junction of Graves Creek and Litchy Creek.				
Quinault River and the unnamed tributary at longitude -123.5450 and latitude 47.5960: All waters (including tributaries) above the junction.				
Quinault River, North Fork, and Rustler Creek: All waters (including tributaries) above the junction.				
Salmon River, Middle Fork, and the unnamed tributary at longitude -123.9899 and latitude 47.5208: All waters (including tributaries) above the junction.				
Sams River and the unnamed tributary at longitude -123.8941 and latitude 47.6059: All waters (including tributaries) above the junction.				
Sollocks River and the unnamed tributary at longitude -124.0133 and latitude 47.6937: All waters (including tributaries) above the junction.				
Stequaleho Creek and the unnamed tributary at longitude -124.0426 and latitude 47.6620: All waters (including tributaries) above the junction.				
Tshlelshy Creek and the unnamed tributary at longitude -123.8668 and latitude 47.6585: All waters (including tributaries) above the junction.				
<b>WRIA 22 Lower Chehalis</b>				
Baker Creek and the unnamed tributary at longitude -123.4142 and latitude 47.3301: All waters (including tributaries) above the junction.				
Big Creek and Middle Fork Big Creek: All waters (including tributaries) above the junction.				

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Rearing	Warm Water Species	Ex Primary Com	Primary Com	Secondary Com	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Canyon River and the unnamed tributary at longitude -123.4936 and latitude 47.3473: All waters (including tributaries) above the junction.											
Chelalis River from upper boundary of Grays Harbor at Cosmopolis (river mile 3.1, longitude 123°45'45"W) to Scammon Creek (river mile 65.8).	✓										
Chester Creek and the unnamed tributary at longitude -123.7841 and latitude 47.4196: All waters (including tributaries) above the junction.	✓										
Decker Creek.	✓										
Goforth Creek and the unnamed tributary at longitude -123.7323 and latitude 47.3560: All waters (including tributaries) above the junction.	✓										
Hoquiam River (continues as west fork above east fork) from mouth to river mile 9.3 (Detay Road Bridge) (upper limit of tidal influence).			✓								
Humpulips River and tributaries from mouth to Olympic National Forest boundary on east fork (river mile 12.8) and west fork (river mile 40.4) (main stem continues as west fork).		✓									
Humpulips River, East Fork, from Olympic National Forest boundary (river mile 12.8) to the unnamed tributary at longitude -123.7163 and latitude 47.3821.			✓								
Humpulips River, East Fork, and the unnamed tributary at longitude -123.7163 and latitude 47.3821; All waters (including tributaries) above the junction.			✓								
Humpulips River, West Fork, from Olympic National Forest boundary (river mile 40.4) to Petes Creek.	✓										
Humpulips River, West Fork, and Petes Creek: All waters (including tributaries) above the junction.				✓							
Satsop River from mouth to west fork (river mile 6.4).				✓							
Satsop River, West Fork, from mouth to Robertson Creek.				✓							
Satsop River, West Fork, and Robertson Creek: All waters (including tributaries) above the junction.				✓							

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TABLE 602	Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatice Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses	Aesthetics	
						Boating	Harboring
Satsop River, Middle Fork, from mouth to the unnamed tributary at longitude -123.4451 and latitude 47.3340.			✓		✓	✓	✓
Satsop River, Middle Fork, and the unnamed tributary at longitude -123.4451 and latitude 47.3340; All waters (including tributaries) above the junction.		✓	✓	✓	✓	✓	✓
Satsop River, East Fork.			✓	✓	✓	✓	✓
Wishkah River from mouth to river mile 6 (SW 1/4 SW 1/4 NE 1/4 Sec. 21-T18N-R9W).			✓	✓	✓	✓	✓
Wishkah River from river mile 6 (SW 1/4 SW 1/4 NE 1/4 Sec. 21-T18N-R9W) to west fork (river mile 17.7).			✓	✓	✓	✓	✓
Wishkah River from west fork of Wishkah River (river mile 17.7) to south boundary of Sec. 33-T21N-R8W (river mile 32.0).			✓	✓	✓	✓	✓
Wishkah River and tributaries from south boundary of Sec. 33-T21N-R8W (river mile 32.0) to headwaters. <sup>1</sup>			✓	✓	✓	✓	✓
Wynoochee River from mouth to Olympic National Forest boundary (river mile 45.9).			✓	✓	✓	✓	✓
Wynoochee River from Olympic National Forest boundary (river mile 45.9) to Wynoochee Dam.			✓	✓	✓	✓	✓
Wynoochee River and all tributaries above Wynoochee Dam.			✓	✓	✓	✓	✓
Notes for WRIA 22:							
1. No waste discharge will be permitted.							
<b>WRIA 23 Upper Chehalis</b>							
Chehalis River from upper boundary of Grays Harbor at Cosmopolis (river mile 3.1, longitude 123°45'45" W) to Scammon Creek (river mile 65.8).				✓	✓	✓	✓
Chehalis River from Scammon Creek (river mile 65.8) to Newaukum River (river mile 75.2). <sup>1</sup>				✓	✓	✓	✓
Chehalis River from Newaukum River (river mile 75.2) to Rock Creek (river mile 106.7).				✓	✓	✓	✓

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Chehalis River from Rock Creek (river mile 106.7) to headwaters, except for the waters specifically listed in this table: Thrash Creek and West and East Forks of the Chehalis River.		✓		
Chehalis River, South Fork, from mouth to the unnamed tributary at longitude -123.4127 and latitude 49.179.	✓			✓
Chehalis River, South Fork, and the unnamed tributary at longitude -123.4127 and latitude 49.179; All waters (including tributaries) above the junction.	✓			✓
Chehalis River, West Fork, and East Fork Chehalis River: All waters (including tributaries) above the junction.	✓			✓
Cloquallum Creek.	✓			✓
Eight Creek and the unnamed tributary at longitude -123.4127 and latitude 46.6211: All waters (including tributaries) above the junction.	✓			✓
Hanford Creek from mouth to east boundary of Sec. 25-T15N-R2W (river mile 4.). <sup>2</sup>	✓			✓
Hanford Creek and all tributaries from east boundary of Sec. 25-T15N-R2W (river mile 4.1) to the unnamed tributary at longitude -122.6812 and latitude 46.7295.	✓			✓
Hanford Creek and the unnamed tributary at longitude -122.6812 and latitude 46.7295: All waters (including tributaries) above the junction.	✓			✓
Kearney Creek and the unnamed tributary at longitude -122.5683 and latitude 46.6256: All waters (including tributaries) above the junction.	✓			✓
Laramie Creek and the unnamed tributary at longitude -122.5901 and latitude 46.7901: All waters (including tributaries) above the junction.	✓			✓
Newaukum River.	✓			✓
Newaukum River, North Fork, and the unnamed tributary at longitude -122.6677 and latitude 46.6793: All waters (including tributaries) above the junction.	✓			✓
Newaukum River, South Fork, and Frase Creek: All waters (including tributaries) above the junction.	✓			✓

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1. Dissolved oxygen shall exceed 5.0 mg/L from June 1 to September 15. For the remainder of the year, the dissolved oxygen shall meet standard criteria.

2. DISSOLVED OXYGEN

Naselle River from Naselle "Falls" (cascade at river mile 18.6) to headwaters.  
Willapa River upstream of a line bearing 70° true through Mailboat Slough light (river mile 18.6).

WRIA 25 Grays-Elokoman

Elochoman River

Grays River from Grays River Falls (river mile 15.8) to headwaters

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TABLE 602

TABLE 602		Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)					
C	Char				
C	Core Salmon/TROUT				
C	Non-Core Salmon/TROUT				
S	Salmon/TROUT Rearing				
R	Redband Trout				
W	Warm Water Species				
E	Ex Primary Cont				
P	Primary Cont				
S	Secondary Cont				
D	Domestic Water				
I	Industrial Water				
A	Agricultural Water				
W	Stock Water				
H	Wildlife Habitat				
C	Commerce/Navigational				
B	Boating				
A	Archaeology				

WRIA 26 Cowlitz	
Cispus River.	Coweeeman River from mouth to Mulholland Creek (river mile 18.4).
	Coweeeman River from Mulholland Creek (river mile 18.4) to headwaters.
	Cowlitz River from mouth to base of Riffe Lake Dam (river mile 52.0).
	Cowlitz River from base of Riffe Lake Dam (river mile 52.0) to headwaters.
	Green River.
	Toutle River, North Fork, from Green River to headwaters.
	Toutle River, South Fork.

WRIA 27 Lewis	
	Alec Creek and all tributaries.
	Big Creek and all tributaries.
	Chickoon Creek and all tributaries.
	Clear Creek and all tributaries.
	Curly Creek and all tributaries.
	Cussed Hollow Creek and all tributaries.
	Kalama River from lower Kalama River Falls (river mile 10.4) to headwaters.
	Lewis River and Pass Creek: All waters (including tributaries) above the junction.
	Lewis River's unnamed tributaries at longitude -121.9174 and latitude 46.1122.
	Lewis River, East Fork, from Multon Falls (river mile 24.6) to headwaters.
	Little Creek and all tributaries.
	Muddy River and Clearwater Creek: All waters (including tributaries) above the junction.
	Panamaker Creek and all tributaries.
	Pin Creek and all tributaries.

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	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Pine Creek and all tributaries.	✓			
Quartz Creek and all tributaries.	✓			
Rush Creek and all tributaries.	✓			
Spencer Creek and all tributaries.	✓			
Steamboat Creek and all tributaries.	✓			
Tillicum Creek and all tributaries.	✓			
<b>WRIA 28 Salmon-Washougal</b>				
Burnt Bridge Creek.	✓			
Salmon Creek.	✓			
<b>WRIA 29 Wind-White Salmon</b>				
Buck Creek and all tributaries.	✓			
Gilmer Creek and all tributaries.	✓			
Gotchen Creek and all tributaries, except those waters in or above the Gifford Pinchot National Forest.	✓			
Gotchen Creek and all tributaries that are in or above the Gifford Pinchot National Forest.	✓			
Green Canyon Creek and all tributaries.	✓			
Morrison Creek and all tributaries.	✓			
Rattlesnake Creek and the unnamed tributary at longitude -121.4081 and latitude 45.8512; All waters (including tributaries) above the juncture.	✓			
Trout Lake Creek and all tributaries below Trout Lake.	✓			
Trout Lake Creek and all tributaries at and above Trout Lake.	✓			
White Salmon River's unnamed tributaries at longitude -121.4991 and latitude 46.0055, except those waters in or above the Gifford Pinchot National Forest.	✓			
White Salmon River's unnamed tributaries at longitude -121.4991 and latitude 46.0055 that are in or above the Gifford Pinchot National Forest.	✓			
Secondary Cont.				
Ex Primary Cont.				
Warm Water Species				
Redband Trout				
Salmon/TROUT Rearing				
Non-CORE Salmon/TROUT				
Core Salmon/TROUT				
Char				
Primary Cont.				
Secondary Cont.				
Domestic Water				
Industrial Water				
Agricultural Water				
Stock Water				
Wildlife Habitat				
Harvesting				
Commerce/Navigational				
Boating				
Aesthetics				

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Core Salmon/TROUT	Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Rearring	Warm Water Species	Ex Primary Cont	Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Harvesting	Commerce/Navigational	Baiting	Aesthetics	Misc. Uses	Water Supply Uses	Recreational Uses	Aquatic Life Uses	Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)
White Salmon River and Cascade Creek: All waters (including tributaries) above the junction.	✓																					
<b>WRIA 30 Klickitat</b>																						
Clearwater Creek and Trappers Creek: All waters (including tributaries) above the junction.	✓																					
Cougar Creek and Big Muddy Creek: All waters (including tributaries) above the junction.	✓																					
Diamond Creek and Caitin Creek: All waters (including tributaries) above the junction.	✓																					
Diamond Fork's unnamed tributaries at longitude -121.1562 and latitude 46.4205.	✓																					
Diamond Fork's unnamed tributaries at longitude -121.1590 and latitude 46.4355 (outlet of Maiden Springs).	✓																					
Fish Lake Stream and all tributaries.	✓																					
Frasier Creek and Outlet Creek: All waters (including tributaries) above the junction.	✓																					
Klickitat River from Little Klickitat River (river mile 19.8) to Diamond Fork.	✓																					
Klickitat River and all tributaries above the junction with Diamond Fork.	✓																					
Little Muddy Creek and all tributaries.	✓																					
McCreedy Creek and all tributaries.	✓																					
<b>WRIA 31 Rock-Glade</b>																						
There are no specific waterbody entries for this WRIA.																						
<b>WRIA 32 Walla Walla</b>																						
Blue Creek and the unnamed tributary at longitude -118.0956 and latitude 46.0579: All waters (including tributaries) above the junction.	✓																					
Mill Creek from mouth to 13th Street Bridge in Walla Walla (river mile 6.4). <sup>1</sup>																						
Mill Creek from 13th Street Bridge in Walla Walla (river mile 6.4) to Walla Walla Waterworks Dam (river mile 11.5).																						

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Mill Creek and Railroad Canyon: All waters (including tributaries) above the junction up to city of Walla Walla Waterworks Dam (river mile 21.6).		✓			✓
Mill Creek and tributaries from city of Walla Walla Waterworks Dam (river mile 21.6) to headwaters (including upstream and downstream of where Mill Creek flows into Oregon). <sup>2</sup>		✓		✓	✓
Rodgers Gulch and the unnamed tributary at longitude -117.8667 and latitude 46.2705: All waters (including tributaries) above the junction.		✓		✓	✓
Touchet River, North Fork, from Dayton water intake structure (river mile 3.0) to Gates Gulch.		✓		✓	✓
Touchet River, North Fork, and Gates Gulch: All waters (including tributaries) above the junction.		✓		✓	✓
Touchet River, South Fork, and the unnamed tributary at longitude -117.9397 and latitude 46.2307: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.			✓	✓	✓
Touchet River, South Fork, and the unnamed tributary at longitude -117.9397 and latitude 46.2307: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.		✓		✓	✓
Walla Walla River from mouth to Lowden (Dry Creek at river mile 27.2).			✓	✓	✓
Walla Walla River from Lowden (Dry Creek at river mile 27.2) to Oregon border (river mile 40). <sup>3</sup>			✓	✓	✓
Wolf Creek and the unnamed tributary at longitude -117.9013 and latitude 46.2511: All waters (including tributaries) above the junction.		✓	✓	✓	✓
<b>Notes for WRIA 32:</b>					
1. Dissolved oxygen concentration shall exceed 5.0 mg/L.					
2. No waste discharge will be permitted for Mill Creek and tributaries from city of Walla Walla Waterworks Dam (river mile 21.6) to headwaters.					

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**TABLE 602****Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)**

Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Core Salmon/TROUT				
Non-Core Salmon/TROUT		✓		
Salmon/FTRout/Rearning				
Redband Trout				
Warm Water Species				
Ex Primary Cont				
Primary Cont		✓		
Secondary Cont			✓	
Domestic Water			✓	
Agricultural Water			✓	
Industrial Water			✓	
Sticke Water			✓	
Wildlife Habitat			✓	
Habitat			✓	
Commerce/NavigatioN			✓	
Boating			✓	
Aesthetics			✓	

3. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed  $t = 34/(T + 9)$ .

**WRIA 33 Lower Snake**Snake River from mouth to Washington-Idaho-Oregon border (river mile 176.1).<sup>1</sup>**Notes for WRIA 33:**

1. Below Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed  $t = 34/(T + 9)$ . Special condition - special fish passage exemption as described in WAC 173-201A-200 (1) (f).

**WRIA 34 Palouse**

Palouse River from mouth to south fork (Colfax, river mile 89.6).		✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
Palouse River from south fork (Colfax, river mile 89.6) to Idaho border (river mile 123.4). <sup>1</sup>					✓	✓	✓	✓	✓	✓	✓	✓	✓

**Notes on WRIA 34:**

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed  $t = 34/(T + 9)$ .

**WRIA 35 Middle Snake**

All streams flowing into Oregon from North Fork Wenaha River east to Fairview Creek.	✓				✓								
Astotin River, North Fork, and all tributaries above Lick Creek, except those waters in or above the Umatilla National Forest.		✓				✓							
Astotin River, North Fork, and all tributaries above Lick Creek that are in or above the Umatilla National Forest.			✓				✓						

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**TABLE 602**  
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses	Aesthetics
Char					
Core Salmon/TROUT					
Non-Core Salmon/TROUT					
Salmon/TROUT Rearranging					
Redband Trout					
Warm Water Species					
Ex Primary Cont					
Primary Cont					
Secondary Cont					
Domestic Water					
Industrial Water					
Agricultural Water					
Stock Water					
Wildlife Habitat					
Harvesting					
Commerce/Navigation					
Boating					
Charley Creek and the unnamed tributary at longitude -117.3216 and latitude 46.2851; All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Charley Creek and the unnamed tributary at longitude -117.3216 and latitude 46.2851; All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Crooked Creek and First Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓	✓
Cummings Creek and all tributaries, except those waters in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Cummings Creek and all tributaries that are in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Grande Ronde River from mouth to Oregon border (river mile 37). <sup>1</sup>	✓	✓	✓	✓	✓
Grub Canyon and all tributaries.	✓	✓	✓	✓	✓
Hixon Canyon and all tributaries.	✓	✓	✓	✓	✓
Little Tucannon River and all tributaries.	✓	✓	✓	✓	✓
Menathee Creek and West Fork Menathee Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓	✓
Pataha Creek and Dry Pataha Creek: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Pataha Creek and Dry Pataha Creek: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.	✓	✓	✓	✓	✓
Snake River from mouth to Washington-Idaho-Oregon border (river mile 176.1). <sup>2</sup>	✓	✓	✓	✓	✓
Tucannon River from Umatilla National Forest boundary (river mile 38.1) to Panjab Creek.	✓	✓	✓	✓	✓
Tucannon River and Panjab Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓	✓
Tucannon River's unnamed tributaries at above longitude -117.7756, latitude 46.3877 and longitude -117.7449, latitude 46.3769.	✓	✓	✓	✓	✓

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TABLE 602	Aquatic Life Uses	Recreational Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)			
Tumalum Creek and the unnamed tributary at longitude -117.6488 and latitude 46.3594: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.		✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
Tumalum Creek and the unnamed tributary at longitude -117.6488 and latitude 46.3594: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.		✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
Willow Creek and the unnamed tributary at longitude -117.8314 and latitude 46.4182: All waters (including tributaries) above the junction.		✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
<b>Notes for WRIA 35:</b>			
1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = \frac{34}{(T + 9)}$ .			
2. The following two notes apply:			
(a) Below Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = \frac{34}{(T + 9)}$ . Special condition - special fish passage exemption as described in WAC 173-201A-200 (1) (f).			
(b) Above Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increases will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to all such activities combined.			
<b>WRIA 36 Esquatzel Coulee</b>			
There are no specific waterbody entries for this WRIA.			
<b>WRIA 37 Lower Yakima</b>			
Ahtanum Creek North Fork's unnamed tributaries at longitude -120.8857 and latitude 46.5465.			
Ahtanum Creek North Fork's unnamed tributaries at longitude -120.9851 and latitude 46.5395.			
Ahtanum Creek, North Fork, and Middle Fork Ahtanum Creek: All waters (including tributaries) above the junction.			

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Altanum Creek, South Fork, and all tributaries.	✓	✓	✓	✓
Carpenter Gulch and all tributaries.	✓	✓	✓	✓
Foundation Creek and all tributaries.	✓	✓	✓	✓
Nasty Creek and all tributaries.	✓	✓	✓	✓
Sulphur Creek.	✓	✓	✓	✓
Yakima River from mouth to Cle Elum River (river mile 185.6). <sup>1</sup>	✓	✓	✓	✓

**Notes for WRIA 37:**

1. Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed  $t = 3.4/(T + 9)$ .

**WRIA 38 Naches**

American River and all tributaries.	✓	✓	✓	✓
Barton Creek and all tributaries.	✓	✓	✓	✓
Bumping Lake's unnamed tributaries at longitude -121.3095 and latitude 46.8464.	✓	✓	✓	✓
Bumping River's unnamed tributaries at longitude -121.2067 and latitude 46.9317 (outlet of Flat Iron Lake).	✓	✓	✓	✓
Bumping River's unnamed tributaries at longitude -121.2766 and latitude 46.8852.	✓	✓	✓	✓
Bumping River below Cougar Creek.	✓	✓	✓	✓
Bumping River and Cougar Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Cedar Creek and all tributaries.	✓	✓	✓	✓
Crow Creek and all tributaries.	✓	✓	✓	✓
Deep Creek and all tributaries.	✓	✓	✓	✓
Goat Creek and all tributaries.	✓	✓	✓	✓
Granite Creek and all tributaries.	✓	✓	✓	✓
Indian Creek and all tributaries.	✓	✓	✓	✓

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Little Naches River and Bear Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Little Naches River, South Fork, and all tributaries.	✓	✓	✓	✓
Naches River from Snoqualmie National Forest boundary (river mile 35.7) to headwaters.	✓	✓	✓	✓
Pileup Creek and all tributaries.	✓	✓	✓	✓
Quatz Creek and all tributaries.	✓	✓	✓	✓
Rattlesnake Creek and all tributaries above Three Creeks.	✓	✓	✓	✓
Sand Creek and all tributaries.	✓	✓	✓	✓
Sunrise Creek and all tributaries.	✓	✓	✓	✓
Tieton River.	✓	✓	✓	✓
Tieton River, North Fork, and Clear Creek: All waters (including tributaries) above the junction at Clear Lake.	✓	✓	✓	✓
Tieton River, South Fork, and Short and Dirty Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
<b>WRIA 39 Upper Yakima</b>				
Big Boulder Creek and all tributaries.	✓	✓	✓	✓
Cle Elum River from mouth to Fortune Creek.	✓	✓	✓	✓
Cle Elum River and Fortune Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Cooper River and all tributaries.	✓	✓	✓	✓
Little Kachess Lake and all tributaries.	✓	✓	✓	✓
Paris Creek and all tributaries.	✓	✓	✓	✓
Teanaway River, North Fork, and all tributaries above Stafford Creek.	✓	✓	✓	✓
Wapato River and all tributaries.	✓	✓	✓	✓
Yakima River from mouth to Cle Elum River (river mile 185.6). <sup>1</sup>	✓	✓	✓	✓

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**TABLE 602**

Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Redband Trout	Warm Water Species	Ex Primary Cont	Primary Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Habitat	Commerce/Navigational	Boating	Boarding	Commercial	Recreational	Aquatic Life Uses	Recreational Water Supply Uses	Misc. Uses
Yakima River and all tributaries above Stampede Creek	✓				✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Yakima River and tributaries from Cle Elum River (river mile 185.6) to Stampede Creek except for the waters specifically listed in this table: Big Boulder Creek, Cle Elum River, Cooper River, Little Kachess Lake, Paris Creek and Waptus River.																					
Yakima River and all tributaries above Stampede Creek	✓				✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Notes for WRIA 39:</b>	1. Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .																				
<b>WRIA 40 Alkaki-Squilchuck</b>	There are no specific waterbody entries for this WRIA.																				
<b>WRIA 41 Lower Crab</b>	Crab Creek and tributaries.																				
<b>WRIA 42 Grand Coulee</b>	Crab Creek and tributaries.																				
<b>WRIA 43 Upper Crab-Wilson</b>	Crab Creek and tributaries.																				
<b>WRIA 44 Moses Coulee</b>	There are no specific waterbody entries for this WRIA.																				
<b>WRIA 45 Wenatchee</b>	Chikamin Creek and all tributaries.																				
	Chiwaukum Creek and South Fork Chiwaukum Creek: All waters (including tributaries) above the junction.																				
	Chiwaukum River from mouth to unnamed creek at longitude -120.8409 and latitude 48.0595 (near Phelps Creek).																				

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Char	Core Salmon/TROUT	Non-Core Salmon/TROUT	Salmon/TROUT Rearing	Warm Water Species	Ex Primary Cont	Primarily Cont	Secondary Cont	Domestic Water	Industrial Water	Agricultural Water	Stock Water	Wildlife Habitat	Habitat	Commerce/Navigational	Boating	Recreational Uses	Aquatic Life Uses	Water Supply Uses	Misc. Uses
<b>TABLE 602</b>																			
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)																			
Chiwawa River and all tributaries above unnamed creek at longitude -120.8409 and latitude 48.0595 (near Phelps Creek).	✓																		
Dry Creek and Chumstick Creek: All waters (including tributaries) above the junction, except those waters in or above the Wenatchee National Forest.	✓																		
Dry Creek and Chumstick Creek: All waters (including tributaries) above the junction that are in or above the Wenatchee National Forest.	✓																		
Eagle Creek and the unnamed tributary at longitude -120.5165 and latitude 47.6544: All waters (including tributaries) above the junction, except those waters in or above the Wenatchee National Forest.	✓																		
Eagle Creek and the unnamed tributary at longitude -120.5165 and latitude 47.6544: All waters (including tributaries) above the junction that are in or above the Wenatchee National Forest.	✓																		
Icicle Creek and all tributaries above unnamed creek at longitude -120.9547 and latitude 47.6206 (near French Creek).	✓																		
Little Giant Creek and all tributaries.	✓																		
Rock Creek and all tributaries.	✓																		
Second Creek and the unnamed tributary at longitude -120.5935 and latitude 47.7384: All waters (including tributaries) above the junction.	✓																		
Van Creek and the unnamed tributary at longitude -120.5373 and latitude 47.6722: All waters (including tributaries) above the junction.	✓																		
Wenatchee River from Wenatchee National Forest boundary (river mile 27.1) to Chiwawa River.	✓																		
Wenatchee River and all tributaries upstream of Chiwawa River.	✓																		
<b>WRIA 46 Eniat</b>																			
Brennegan Creek and the unnamed tributary at longitude -120.4185 and latitude 47.9098: All waters (including tributaries) above the junction.	✓																		
Eniat River from Wenatchee National Forest boundary (river mile 20.5) to Silver Creek.	✓																		

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TABLE 602	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Entiat River and Silver Creek: All waters (including tributaries) above the junction.	✓			
Entiat River's unnamed tributaries at longitude -120.4998 and latitude 47.9107.	✓			
Entiat River's unnamed tributaries at longitude -120.5179 and latitude 47.9174.	✓			
Gene Creek and Potato Creek: All waters above the junction.	✓			
Gray Canyon, North Fork, and South Fork Gray Canyon: All waters (including tributaries) above the junction.	✓			
Hornet Creek and all tributaries.	✓			
Lake Creek and all tributaries.	✓			
Mad River and all tributaries above Young Creek.	✓			
Mud Creek and Switchback Canyon: All waters (including tributaries) above the junction.	✓			
Preston Creek and South Fork Preston Creek: All waters (including tributaries) above the junction.	✓			
Stormy Creek and the unnamed tributary at longitude -120.3865 and latitude 47.8387: All waters (including tributaries) above the junction.	✓			
Tillicum Creek and Indian Creek: All waters (including tributaries) above the junction.	✓			
Tommy Creek and all tributaries.	✓			
<b>WRIA 47 Chelan</b>				
Stehekin River.	✓			
<b>WRIA 48 Methow</b>				
Beaver Creek and South Fork Beaver Creek: All waters (including tributaries) above the junction.	✓			
Big Hidden Lake and all tributaries, and the outlet stream that flows into the East Fork Pasayten River.	✓			
Boulder Creek and Pebble Creek: All waters (including tributaries) above the junction.	✓			
Buttermilk Creek and all tributaries.	✓			

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Char	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Cedar Creek and all tributaries.	✓	✓	✓	✓
Chewuch River.	✓	✓	✓	✓
Eagle Creek and all tributaries.	✓	✓	✓	✓
Early Winters Creek and Varden Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Eureka Creek and all tributaries.	✓	✓	✓	✓
Goat Creek and Cougar Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Gold Creek and all tributaries, except those waters in or above the Okanogan National Forest.	✓	✓	✓	✓
Lake Creek and all tributaries above Black Lake.	✓	✓	✓	✓
Libby Creek and Hornet Draw: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Lost River Gorge and all tributaries above Sunset Creek.	✓	✓	✓	✓
Methow River from mouth to Chewuch River (river mile 50.1).	✓	✓	✓	✓
Methow River from Chewuch River (river mile 50.1) to junction of West Fork Methow River and South Fork Trout Creek.	✓	✓	✓	✓
Methow River, West Fork, and South Fork Trout Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Pipestone Canyon Creek and all tributaries below Campbell Lake.	✓	✓	✓	✓
Pipestone Canyon Creek and all tributaries above Campbell Lake, Campbell Lake, and all tributaries to Campbell Lake.	✓	✓	✓	✓
Rattlesnake Creek and all tributaries.	✓	✓	✓	✓
Robinson Creek and all tributaries.	✓	✓	✓	✓
Smith Canyon Creek and Elderberry Canyon: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Twisp River from mouth to War Creek.	✓	✓	✓	✓

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatic Life Uses	Recreational Water Supply Uses	Misc. Uses
Twisp River and War Creek: All waters (including tributaries) above the junction.	✓		
Wolf Creek and North Fork Wolf Creek: All waters (including tributaries) above the junction.	✓		
<b>WRIA 49 Okanogan</b>			
Okanogan River.			
<b>WRIA 50 Foster</b>			
There are no specific waterbody entries for this WRIA.			
<b>WRIA 51 Nespelem</b>			
There are no specific waterbody entries for this WRIA.			
<b>WRIA 52 Sampson</b>			
There are no specific waterbody entries for this WRIA.			
<b>WRIA 53 Lower Lake Roosevelt</b>			
There are no specific waterbody entries for this WRIA.			
<b>WRIA 54 Lower Spokane</b>			
Spokane River from mouth to Long Lake Dam (river mile 33.9). <sup>1</sup>	✓		
Spokane River from Long Lake Dam (river mile 33.9) to Nine Mile Bridge (river mile 58.0). <sup>2</sup>	✓	✓	
Spokane River from Nine Mile Bridge (river mile 58.0) to the Idaho border (river mile 96.5). <sup>3</sup>	✓	✓	✓
<b>Notes for WRIA 54:</b>			
1. Temperature shall not exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .			
2. a. The average euphotic zone concentration of total phosphorus (as P) shall not exceed 25 $\mu\text{g}/\text{L}$ during the period of June 1 to October 31.			

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
				Aesthetics
				Boating
				Commerce/Navigational
				Harvesting
				Wildlife Habitat
				Sick Water
				Agricultural Water
				Industrial Water
				Domestic Water
				Secondary Cont
				Primary Cont
				Ex Primary Species
				Warm Trout
				Redband Trout
				Non-Coho Salmon/TROUT
				Coho Salmon/TROUT
				Charr
b. Temperature shall not exceed a 1-DMax of 20.0°C, due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
3. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time exceed $t = 34/(T+9)$ .				

**WRIA 55 Little Spokane**

There are no specific waterbody entries for this WRIA.

**WRIA 56 Hangman**

There are no specific waterbody entries for this WRIA.

**WRIA 57 Middle Spokane**

Lake Creek and all tributaries.

Spokane River from Nine Mile Bridge (river mile 58.0) to the Idaho border (river mile 96.5).<sup>1</sup>**Notes on WRIA 57:**

- Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time exceed  $t = 34/(T+9)$ .

**WRIA 58 Middle Lake Roosevelt**

There are no specific waterbody entries for this WRIA.

**WRIA 59 Colville**

Colville River.

**WRIA 60 Kettle**

There are no specific waterbody entries for this WRIA.

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**TABLE 602**

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

	Aquatic Life Uses	Recreational Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
WRIA 61 Upper Lake Roosevelt				
All streams flowing into Idaho from Kalispell Creek (at longitude -117.0339 and latitude 48.5865) to the Canadian border.				
Kalispell Creek (including tributaries) from Small Creek to Kalispell Lake. Calispell Lake and all tributaries.	✓	✓	✓	✓
Le Clerc Creek, East Branch, and West Branch Le Clerc Creek: All waters (including tributaries) above the junction, except those waters in or above the Colville National Forest.	✓	✓	✓	✓
Harvey Creek and Paupac Creek: All waters (including tributaries) above the junction. Pass Creek and all tributaries.	✓	✓	✓	✓
Pend Oreille River from Canadian border (river mile 16.0) to Idaho border (river mile 87.7). <sup>1</sup>	✓	✓	✓	✓
Small Creek and all tributaries, except those waters in or above the Kaniksu National Forest.	✓	✓	✓	✓
Small Creek and all tributaries that are in or above the Kaniksu National Forest.	✓	✓	✓	✓
South Salmo River and all tributaries.	✓	✓	✓	✓
Sullivan Creek and Gypsy Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
<b>Notes for WRIA 62:</b>				
1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed t = 34(T + 9).				

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	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>COLUMBIA RIVER</b>				
Columbia River from mouth to the Washington-Oregon border (river mile 309.3). <sup>1</sup>				
Columbia River from Washington-Oregon border (river mile 309.3) to Grand Coulee Dam (river mile 596.6). <sup>2,3</sup>				
Columbia River from Grand Coulee Dam (river mile 596.6) to Canadian border (river mile 745.0).				
<b>Notes for Columbia River:</b>				
1. Temperature shall not exceed a 1-day maximum (1-DMax) of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to any single source or 1.1°C due to all such activities combined. Dissolved oxygen shall exceed 90 percent of saturation. Special condition - special fish passage exemption as described in WAC 173-201A-200 (1)(f).				
2. From Washington-Oregon border (river mile 309.3) to Priest Rapids Dam (river mile 397.1). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
3. From Washington-Oregon border (river mile 309.3) to Grand Coulee Dam (river mile 596.6). Special condition - special fish passage exemption as described in WAC 173-201A-200 (1)(f).				
<b>WRIA 1 - Nooksack</b>				
Bertrand Creek from mouth to Canadian border	✓		✓	✓
Breckenridge Creek and tributaries	✓		✓	✓
Chilliwack River and Little Chilliwack River: All waters (including tributaries) above the junction.	✓		✓	✓
Chickanum Creek from mouth to headwaters	✓		✓	✓
Colony Creek and tributaries from mouth to headwaters	✓		✓	✓
Dakota Creek and tributaries	✓		✓	✓
Dale Creek	✓		✓	✓
Deer Creek (tributary to Barrett Lake) and tributaries	✓		✓	✓
Depot Creek and tributaries	✓		✓	✓

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Fishtrap Creek from mouth to Canadian border				
Hutchinson Creek and tributaries.	✓			
Johnson Creek, unnamed tributary just north of Pangborn Road watershed	✓			
Nooksack River mainstem from mouth to Anderson Creek.	✓			
Nooksack River and tributaries [except where otherwise designated Char] from and including Anderson Creek (latitude 48.8675 longitude -122.3210) to junction with South Fork.	✓			
Nooksack River, North Fork, and all tributaries, upstream to the junction with Maple creek (RM 49.7).	✓			
Nooksack River, North Fork, and all tributaries above and including Maple Creek (RM 49.7) and tributaries.	✓			
Nooksack River, Middle Fork, and all tributaries.	✓			
Nooksack River, South Fork, from mouth to Skookum Creek (river mile 14.3).	✓			
Nooksack River, South Fork, from Skookum Creek (river mile 14.3) to Fobes Creek.	✓			
Nooksack River, South Fork, and all tributaries above the junction at Fobes Creek.	✓			
Padden Creek and tributaries from mouth to headwaters	✓			
Pepin Creek from mouth to Canadian border	✓			
Saar Creek from latitude 48.9490 longitude -122.2252 to headwaters	✓			
Silesia Creek and all tributaries south of Canadian border.	✓			
Skookum Creek and all tributaries.	✓			
Squaw Creek	✓			
Squalicum Creek, unnamed tributary from latitude 48.7862 longitude -122.4864 to headwaters	✓			
Stickney Creek (Slough) and Kamm Ditch from confluence with mainstem Nooksack River to headwaters.	✓			

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>TABLE 602</b>				
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Sumas River from Canadian border (river mile 12) to headwaters (river mile 23) except where designated otherwise.	✓	✓	✓	✓
Tenmile Creek below Barrett Lake	✓	✓	✓	✓
Tomyhoi Creek and tributaries from Canadian border to headwaters.	✓	✓	✓	✓
Whatcom Creek and tributaries from mouth to outlet of Lake Whatcom.	✓	✓	✓	✓
<b>WRIA 2 San Juan</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 3 Lower Skagit-Samish</b>				
Fisher Creek and tributaries.	✓			✓
Hansen Creek and tributaries.	✓			✓
Nookachamps Creek and tributaries (except where designated char).	✓			✓
Nookachamps Creek, East Fork, and unnamed creek at latitude 48.4103 longitude -122.1657; All waters (including tributaries) above the junction.	✓			✓
Samish River and tributaries above latitude 48.5472 longitude -122.3378 (Sect 18 T36 R4E).	✓			✓
Skagit River mainstem from mouth to Skiyou Slough-lower end (river mile 25.6).	✓			✓
Skagit River, all tributaries to the mainstem from the mouth to Skiyou Slough- lower end (river mile 25.6); except where designated otherwise.	✓			✓
Skagit River and tributaries from Skiyou Slough-lower end, (river mile 25.6) to the boundary of WRIA 3 and 4, except the other waters listed for this WRIA. <sup>1</sup>	✓			✓
Walker Creek and unnamed creek at latitude 48.3813 longitude -122.1639; All waters (including tributaries) above the junction.	✓			✓
<b>Notes for WRIA 3:</b>				
1. Skagit River (Gorge by-pass reach) from Gorge Dam (river mile 96.6) to Gorge Powerhouse (river mile 94.2). Temperature shall not exceed a 1-DMax of 21°C due to human activities. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
<b>WRIA 4 Upper Skagit</b>				

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Bacon Creek and all tributaries.	✓	✓	✓	✓
Baker Lake and all tributaries.	✓	✓	✓	✓
Bear Creek and the unnamed outlet creek of Blue Lake: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Big Beaver Creek and all tributaries.	✓	✓	✓	✓
Big Creek and all tributaries.	✓	✓	✓	✓
Buck Creek and all tributaries.	✓	✓	✓	✓
Cascade River and Boulder Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Circle Creek and all tributaries.	✓	✓	✓	✓
Clear Creek and all tributaries.	✓	✓	✓	✓
Diosbud Creek and the unnamed tributary at longitude -121.4414 and latitude 48.3850: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Goodell Creek and all tributaries.	✓	✓	✓	✓
Hozomeen Creek and all tributaries.	✓	✓	✓	✓
Illabot Creek and all tributaries.	✓	✓	✓	✓
Jordan Creek and all tributaries.	✓	✓	✓	✓
Lightning Creek and all tributaries.	✓	✓	✓	✓
Little Beaver Creek and all tributaries.	✓	✓	✓	✓
Murphy Creek and all tributaries.	✓	✓	✓	✓
Newhalem Creek, and all tributaries	✓	✓	✓	✓
Rocky Creek and all tributaries.	✓	✓	✓	✓
Ruby Creek and all tributaries.	✓	✓	✓	✓
Sauk River and Dutch Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Silver Creek and all tributaries.	✓	✓	✓	✓
Skagit River and tributaries, except where listed otherwise for this WRIA. <sup>1</sup>	✓	✓	✓	✓
Secondary Contaminants	✓	✓	✓	✓
Domestic Water	✓	✓	✓	✓
Industrial Water	✓	✓	✓	✓
Agricultural Water	✓	✓	✓	✓
Stock Water	✓	✓	✓	✓
Wildlife Habitat	✓	✓	✓	✓
Habitat Staging	✓	✓	✓	✓
Commerce/Navigation	✓	✓	✓	✓
Boating	✓	✓	✓	✓
Scenic/Aesthetic	✓	✓	✓	✓

**TABLE 602**  
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

Notes for WRIA 4

1. Skagit River (Gorge by-pass reach) from Gorge Dam (river mile 96.6) to Gorge Powerhouse (river mile 94.2). Temperature shall not exceed a 1-  
DMax of 21°C due to human action. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the  
receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed  $T = 34/(T + 9)$ .

**WBLA** ≠ **Stilletwamish**

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Dicks Creek and unnamed outlet of Myrtle Lake at latitude 48.3187 longitude -121.8129; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Jim Creek and Little Jim Creek; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Jorgenson Slough (Church Creek) from latitude 48.2347 longitude -121.3530 between West Pass and Hat Slough; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Lake Cavanaugh and all tributaries above outlet at latitude 48.3127 longitude -121.9802.	✓	✓	✓	✓
Pilchuck Creek and Bear Creek; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Pilchuck Creek's unnamed tributaries at latitude 48.3104 longitude -122.1305; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Pilchuck Creek from latitude 48.2395 longitude -122.2015 (above 268 <sup>th</sup> St) to headwaters including tributaries(except where designated Char)	✓	✓	✓	✓
Unnamed tributary to Portage Creek at latitude 48.1837 longitude -122.2314; All waters (including tributaries) above the junction	✓	✓	✓	✓
Stillaguamish River from mouth to junction of north and south forks (river mile 17.8).	✓	✓	✓	✓
Stillaguamish River, North Fork, from mouth to Boulder River (including tributaries) except where designated Char.	✓	✓	✓	✓
Stillaguamish River, North Fork, and Boulder River; All waters (including tributaries) from the junction up to Squire Creek, downstream of the Mt. Baker Snoqualmie National Forest.	✓	✓	✓	✓
Stillaguamish River, North Fork, and Boulder River; All waters (including tributaries) from the junction up to Squire Creek that are in or above the Mt. Baker Snoqualmie National Forest.	✓	✓	✓	✓
Stillaguamish River, North Fork, from Squire Creek (river mile 31.2) to headwaters, including all tributaries.	✓	✓	✓	✓
Secondary Cont				
Ex Primary Cont				
Primary Cont				
Second Day Cont				
Domestic Water				
Industrial Water				
Agricultural Water				
Habitat				
Stock Water				
Stocking				
Boating				
Commerce/Navigation				
Esthetics				

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Stillaguamish River, South Fork, from mouth to Canyon Creek (river mile 33.7).	✓			✓
Stillaguamish River, South Fork, from Canyon Creek (river mile 33.7) to the unnamed tributary at latitude 48.0921 longitude -121.8797 (near Cranberry Creek).	✓		✓	✓
Stillaguamish River, South Fork, and the unnamed tributary at latitude 48.0921 longitude -121.8797 (near Cranberry Creek): All waters (including tributaries) above the junction.	✓		✓	✓
<b>WRIA 6 Island</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 7 Snohomish</b>				
Cherry Creek and tributaries from mouth to headwaters.	✓			✓
Cripple Creek and all tributaries.	✓			✓
Kelly Creek and tributaries.	✓			✓
Miller River, East Fork, and West Fork Miller River: All waters (including tributaries) above the junction.	✓			✓
North Fork Creek and unnamed creek at latitude 47.7409 longitude -121.8231 (Sect. 18 T26N R8E): All waters (including tributaries) above the junction.	✓			✓
Pilchuck River from mouth to Boulder Creek.	✓			✓
Pilchuck River and Boulder Creek: All waters (including tributaries) above the junction.	✓			✓
Pratt River and all tributaries.	✓			✓
Skykomish River and tributaries from mouth to May Creek (above Gold Bar at river mile 41.2).	✓			✓
Skykomish River and May Creek (above Gold Bar at river mile 41.2): All waters (including tributaries) above junction (Except where designated Char).	✓			✓
Skykomish River, North Fork, beginning below Salmon Creek at latitude 47.8790 longitude -121.4594 to headwaters (including tributaries).	✓			✓
Skykomish River, South Fork, and Beckler River: All waters (including	✓			✓

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
tributaries) above the junction.				
Snohomish River from mouth and east of longitude 122°1'34" W upstream to latitude 47°56'30" N (southern tip of Ebey Island at river mile 8.1). <sup>1</sup>	✓	✓	✓	✓
Snohomish River from latitude 47°56'30" N (southern tip of Ebey Island at river mile 8.1) to below Pilchuck Creek at latitude 47.9045 longitude -122.0917.	✓	✓	✓	✓
Snohomish River from below Pilchuck Creek (latitude 47.9045 longitude -122.0917) to confluence with Skykomish and Snoqualmie River (river mile 20.5).	✓	✓	✓	✓
Snoqualmie River from mouth to junction with Harris Creek (latitude 47.7686 longitude- 121.9605; Sect.5 T25N R6E)	✓	✓	✓	✓
Snoqualmie River and tributaries from and including Harris Creek (latitude 47.7686 longitude -121.9605; Sect.5 T25N R6E) to west boundary of Twin Falls State Park on south fork (river mile 9.1).	✓	✓	✓	✓
Snoqualmie River, South Fork, from west boundary of Twin Falls State Park (river mile 9.1) to headwaters (including tributaries).	✓	✓	✓	✓
Snoqualmie River, North Fork, from mouth to Sunday Creek.	✓	✓	✓	✓
Snoqualmie River, North Fork, and Sunday Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Snoqualmie River, Middle Fork, from mouth to Dingford Creek (Except where designated char).	✓	✓	✓	✓
Snoqualmie River, Middle Fork, and Dingford Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Snoqualmie River's Middle Fork's unnamed tributaries at latitude 47.5389 longitude -121.5629 (Sect. 29 T24N R10E).	✓	✓	✓	✓
Sultan River and tributaries from mouth to Chaplain Creek (river mile 5.9).	✓	✓	✓	✓
Sultan River and tributaries from Chaplain Creek (river mile 5.9) to headwaters. <sup>2</sup>	✓	✓	✓	✓
Taylor River and all tributaries.	✓	✓	✓	✓
Tolt River, North Fork, and unnamed creek at latitude 47.7183 longitude -121.7775: All waters (including tributaries) above the junction.	✓	✓	✓	✓

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Tolt River, South Fork, and tributaries from mouth to west boundary of Sec. 31-T26N-R9E (river mile 6.9).	✓		✓	✓
Tolt River, South Fork, and tributaries from west boundary of Sec. 31-T26N-R9E (river mile 6.9) to headwaters, except for the waters specifically listed in this table: South Fork Tolt River and South Fork Tolt River's unnamed tributaries. <sup>3</sup>	✓		✓	✓
Tolt River, South Fork, and unnamed creek at latitude 47.6925 longitude -121.7392; All waters (including tributaries) above the junction.	✓		✓	✓
Tolt River's South Fork's unnamed tributaries at latitude 47.6889 longitude -121.7856 (Sect.33 T26N R8E), Trout Creek and all tributaries.	✓		✓	✓
Char Spawning/Rearing				
Coho Summer Habitat				
Spawning/Rearing				
Recreational Only				
Recreational Trout				
Warm Water Species				
Ex Primary Comt				
Primary Comt				
Seconday Comt				
Domestic Water				
Industrial Water				
Agricultural Water				
Stock Water				
Wildlife Habitat				
Habitat				
Commerce/Navigatioin				
Boating				
Harvesting				
Stock Water				
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Warm Water Species				
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Wildlife Habitat				
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Ex Primary Comt				
Recreational Only				
Recreational Trout				
Warm Water Species				
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Seconday Comt				
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Wildlife Habitat				
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Commerce/Navigatioin				
Boating				
Harvesting				
Stock Water				
Wildlife Habitat				
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Recreational Only				
Recreational Trout				
Warm Water Species				
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Seconday Comt				
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Commerce/Navigatioin				
Boating				
Harvesting				
Stock Water				
Wildlife Habitat				
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Recreational Only				
Recreational Trout				
Warm Water Species				
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Commerce/Navigatioin				
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Harvesting				
Stock Water				
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Ex Primary Comt				
Recreational Only				
Recreational Trout				
Warm Water Species				
Ex Primary Comt				
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Seconday Comt				
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Commerce/Navigatioin				
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Stock Water				
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Recreational Only				
Recreational Trout				
Warm Water Species				
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Stock Water				
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Commerce/Navigatioin				
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Stock Water				
Wildlife Habitat				
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Recreational Only				
Recreational Trout				
Warm Water Species				
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Commerce/Navigatioin				
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Recreational Only				
Recreational Trout				
Warm Water Species				
Ex Primary Comt				
Primary Comt				
Seconday Comt				
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Wildlife Habitat				
Habitat				
Commerce/Navigatioin				
Boating				
Harvesting				
Stock Water				
Wildlife Habitat				
Seconday Comt				
Primary Comt				
Ex Primary Comt				
Recreational Only				
Recreational Trout				
Warm Water Species				
Ex Primary Comt				
Primary Comt				
Seconday Comt				
Stock Water				
Wildlife Habitat				
Habitat				
Commerce/Navigatioin				
Boating				
Harvesting				
Stock Water				
Wildlife Habitat				
Second				

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Lake Washington Ship Canal from Government Locks (river mile 1.0) to Lake Washington (river mile 8.6). <sup>3,4</sup>				
<b>Notes for WRIA 8:</b>				
1. No waste discharge will be permitted.				
2. No waste discharge will be permitted.				
3. Salinity shall not exceed one part per thousand (1.0 ppt) at any point or depth along a line that transects the ship canal at the University Bridge (river mile 6.1).				
4. This waterbody is to be treated as a Lakes for purposes of applying this chapter.				
<b>WRIA 9 Duwamish-Green</b>				
Duwamish River from mouth south of a line bearing 254° true from the NW corner of berth 3, terminal No. 37 to the Black River (river mile 11.0) (Duwamish River continues as the Green River above the Black River).	✓		✓	✓
Green River from and including the Black River (river mile 11.0 and point where Duwamish River continues as the Green River) to latitude 47°36'9 longitude -122.246 (Sect. 25 T22N R4E) above junction with unnamed tributary.	✓		✓	✓
Green river from above junction with unnamed tributary at latitude 47°36'9 longitude -122.246 (Sect. 25 T22N R4E) (east of the West Valley highway) to west boundary of Flaming Geyser State Park (including all tributaries)	✓		✓	✓
Green River from W. Boundary of Flaming Geyser State Park to headwaters (including tributaries) except where designated Char, Core, and Ex. Primary: Green River and Sunday Creek: All waters (including tributaries) above the junction. <sup>1</sup>	✓		✓	✓
Smay Creek and West Fork Smay Creek: All waters (including tributaries) above the junction. <sup>1</sup>	✓		✓	✓
<b>Notes for WRIA 9:</b>				
1. No waste discharge will be permitted for the Green River and tributaries (King County) from west boundary of Sec. 13-T21N-R7E (river mile 59.1) to headwaters.				
<b>WRIA 10 Puyallup-White</b>				

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Carbon River and tributaries above latitude 46.9998 longitude -121.0794, downstream of the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Carbon River and tributaries above latitude 46.9998 longitude -121.9794 that are in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Clarks Creek upstream of tribal reservation.	✓	✓	✓	✓
Clear Creek and tributaries upstream of tribal reservation.	✓	✓	✓	✓
Clearwater River and Milky Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Greenwater River from junction with White River to headwaters (including all tributaries).	✓	✓	✓	✓
Puyallup River from mouth to river mile 1.0.	✓	✓	✓	✓
Puyallup River from river mile 1.0 to junction with White River.	✓	✓	✓	✓
Puyallup River and tributaries from junction with White River to Mowich River (Except where designated char.).	✓	✓	✓	✓
Puyallup River at and including Mowich River: All waters (including tributaries) above the junction.	✓	✓	✓	✓
South Prairie Creek and all tributaries above the Kepka Fishing Pond, except those waters in or above the Snoqualmie National Forest.	✓	✓	✓	✓
South Prairie Creek and all tributaries above the Kepka Fishing Pond that are in or above the Snoqualmie National Forest.	✓	✓	✓	✓
Swan Creek upstream of tribal reservation.	✓	✓	✓	✓
Voight Creek and Bear Creek: All waters (including tributaries) above the junction, that are downstream of the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
Voight Creek and Bear Creek: All waters (including tributaries) above the junction that are in or above the Snoqualmie National Forest or Mt. Rainier National Park.	✓	✓	✓	✓
White River from mouth to latitude 47.2438 longitude -122.2422 (Sect. 1 T20N	✓	✓	✓	✓

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Char Spawning/Rearing				
Core Summer Habitat				
Spawning/Rearing				
Breeding/Migration Only				
Redband Trout				
Ex Primary Comt				
Seconday Comt				
Domestic Water				
Industrial Water				
Agicultural Water				
Stock Water				
Wildlife Habitat				
Habitat				
Commerce/Navigatiion				
Boating				
Aesthetics				
R4E).				
White River from latitude 47.2438 longitude -122.2422 (Sect. 1 T20N R4E) to Mud Mountain dam (including tributaries).	✓			
White River from Mud Mountain Dam (river mile 27.1) to West Fork White River at (latitude 47.3699 longitude -121.6197) except where designated Char.	✓			
White River from and including West Fork White River: All waters (including tributaries) above the junction.	✓			
Wilkeson Creek and Cale Creek: All waters (including tributaries) above the junction, except those waters in or above the Snoqualmie National Forest.	✓			
Wilkeson Creek and Cale Creek: All waters (including tributaries) above the junction that are in or above the Snoqualmie National Forest.	✓			
<b>WRIA 11 Nisqually</b>				
Big Creek and all tributaries.	✓			
Copper Creek and all tributaries.	✓			
East Creek and all tributaries.	✓			
Horn Creek and tributaries	✓			
Little Nisqually River and all tributaries.	✓			
Mashel River and Little Mashel River: All waters (including tributaries) above the junction.	✓			
Mineral Creek and all tributaries.	✓			
Muck Creek and tributaries	✓			
Murray Creek and tributaries	✓			
Nisqually River mainstem from mouth to Alder Dam (river mile 44.2).	✓			
Nisqually River from Alder Dam (river mile 44.2) to Tahoma Creek (including tributaries) except where designated Char.	✓			
Nisqually River and Tahoma Creek: All waters (including tributaries) above the junction.	✓			

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Rocky Slough from latitude 46.8882 longitude -122.4339 to latitude 46.9109 longitude -122.4012.				
Tanwax Creek and tributaries downstream of lakes				
<b>WRIA 12 Chambers-Clover</b>				
Clover Creek from outlet of Lake Spanaway to inlet of Lake Steilacoom.				
<b>WRIA 13 Deschutes</b>				
Deschutes River from mouth to and including tributary to Offutt Lake.	✓			
Deschutes River, and tributaries, upstream of the tributary to Offutt Lake (all waters in or above the national forest boundary).	✓	✓		
Deschutes River, and tributaries, upstream of the tributary to Offutt Lake (all waters below the national forest boundary).	✓	✓		
<b>WRIA 14 Kennedy-Goldsborough</b>				
Campbell Creek and tributaries	✓			
Coffie Creek and tributaries	✓			
Cranberry Creek and tributaries	✓			
Deer Creek and tributaries	✓			
Goldsborough Creek and tributaries	✓			
Hiawata Creek and tributaries	✓			
Jarrell Creek and tributaries	✓			
John's Creek and tributaries	✓			
Jones Creek and tributaries	✓			
Malaney Creek (at Spencer Lake)	✓			
McLane Creek and tributaries	✓			
Mill Creek and tributaries	✓			
Perry Creek and tributaries	✓			
Shelton Creek and tributaries	✓			

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Uncle Johns Creek and tributaries				
Unnamed stream (latitude 47.2237 longitude -122.9135) at Peale Passage inlet on west side of Hartside Island.				
<b>WRIA 15 Kitsap</b>				
Anderson Creek and tributaries	✓			
Barker Creek and tributaries from Dyes Inlet to Island Lake	✓			
Blackjack Creek and tributaries downstream of Square Lake	✓			
Chico Creek and tributaries above junction with Kitsap Creek (tributaries to Chico Bay in Dyes Inlet).	✓			
Clear Creek from Dyes Inlet to headwaters (including tributaries)	✓			
Gamble Creek and tributaries (latitude 47.8116 longitude -122.5797).	✓			
Gorst Creek and tributaries	✓			
Martha John Creek and tributaries (latitude 47.8252 longitude -122.5632).	✓			
Ross Creek and tributaries	✓			
Strawberry Creek and tributaries (latitude 47.6458 longitude -122.6933)	✓			
Union River and tributaries from Bremerton Waterworks Dam (river mile 6.9) to headwaters. <sup>1</sup>	✓			
Unnamed tributary to Sinclair Inlet between Gorst and Anderson Creeks (latitude 47.5270 longitude -122.6932).				
Unnamed tributary to Sinclair Inlet (latitude 47.5471 longitude -122.6123) east of Blackjack Creek	✓			
Unnamed tributary west of Port Gamble Bay at latitude 47.8195 longitude -122.5848.	✓			
<b>Notes for WRIA 15:</b>				
1. No waste discharge will be permitted.				
<b>WRIA 16 Skokomish-Dosewallips</b>				

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)</b>				
Dosewallips River and tributaries.				✓
Duckabush River and tributaries.				✓
Hamma Hamma River and tributaries.				✓
Rock Creek and unnamed tributary at latitude 47.3894 longitude -123.3496; All waters (including tributaries) above the junction.	✓			✓
Skokomish River and tributaries, except where designated char.	✓			✓
Skokomish River, North Fork, from latitude 47.4160 longitude -123.2233 (below Cushman Upper Dam) to headwaters (including tributaries).	✓			✓
Skokomish River, South Fork, and Brown Creek: All waters (including tributaries) above the junction.	✓			✓
Vance Creek and Cabin Creek all waters above the junction.	✓			✓
<b>WRIA 17 Quillene-Snow</b>				
Big Quilcene River and tributaries.	✓			✓
<b>WRIA 18 Elwha-Dungeness</b>				
Boulder Creek and Deep Creek: All waters (including tributaries) above the junction.	✓			✓
Dungeness River mainstem from mouth to Canyon Creek (river mile 10.8).	✓			✓
Dungeness River, tributaries to mainstem, above and between confluence with Matriotti Creek to Canyon Creek (river mile 10.8).	✓			✓
Dungeness River and Canyon Creek: All waters (including tributaries) above the junction.	✓			✓
Elwha River and tributaries from mouth to Cat Creek, except where designated Char.	✓			✓
Elwha River and Cat Creek: All waters (including tributaries) above the junction.	✓			✓
Ennis Creek and White Creek (and all tributaries) from the junction with the Strait of Juan De Fuca to the Olympic National Park Boundary.	✓			✓
Ennis Creek and tributaries lying above the Olympic National Park Boundary.	✓			✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Griff Creek and the unnamed tributary at latitude 48.0135 longitude -123.5440 (Sect. 11 T29N R7W); All waters (including tributaries) above the junction.	✓	✓	✓	✓
Hughes Creek and the unnamed tributary at latitude 48.0298 longitude -123.6322 (Sect. 6 T29N R7W); All waters (including tributaries) above the junction.	✓	✓	✓	✓
Little River and all tributaries.				
Marriotti Creek				
Wolf Creek and the unnamed tributary at latitude 47.9654 longitude -123.5374 (Sect. 35 T29N R7W); All waters (including tributaries) above the junction.	✓			
<b>WRIA 19 Lyre-Hoko</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 20 Soledue</b>				
Dickey River and tributaries.	✓			
Hoh River and tributaries from mouth to South Fork Hoh River.	✓			
Hoh River and South Fork Hoh River; All waters above the junction.	✓			
Quillayute River.				
Soleduck River and tributaries from mouth to Canyon Creek.	✓			
Soleduck River and all tributaries above Canyon Creek.	✓			
<b>WRIA 21 Queets-Quinault</b>				
Clearwater River and the unnamed tributary at latitude 47.7720 longitude -124.0361 (Sect.26 T26N R11W); All waters (including tributaries) above the junction.	✓			
Kunamakst Creek and the unnamed tributary at latitude 47.7285 longitude -124.0771 (Sect.26 T26N R11W); All waters (including tributaries) above the junction.	✓			
Matheny Creek and the unnamed tributary at latitude 47.5592 longitude -123.9538; All waters (including tributaries) above the junction.	✓			
Queets River and tributaries from mouth to Tshlelshy Creek.	✓			

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>TABLE 602</b>				
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Queets River and tributaries above the junction with Tshlelthy Creek.				
Quinault River and tributaries from mouth to the junction with the North Fork Quinault River.	✓			
Quinault River and North Fork Quinault: All waters (including tributaries) above the junction.	✓			
Salmon River, Middle Fork, and the unnamed tributary at latitude 47.5208 longitude -123.9899; All waters (including tributaries) above the junction.	✓			
Sams River and the unnamed tributary at latitude 47.6059 longitude -123.8941: All waters (including tributaries) above the junction.	✓			
Sollecks River and the unnamed tributary at latitude 47.6937 longitude -124.0133: All waters (including tributaries) above the junction.	✓			
Siequaleho Creek and the unnamed tributary at latitude 47.6620 longitude -124.0426; All waters (including tributaries) above the junction.	✓			
Tshlelthy Creek and the unnamed tributary at latitude 47.6585 longitude -123.8668; All waters (including tributaries) above the junction.	✓			
<b>WRIA 22 Lower Chehalis</b>				
Andrews Creek and tributaries above junction with West Fork.	✓			
Baker Creek and the unnamed tributary at latitude 47.3301 longitude -123.4142: All waters (including tributaries) above the junction.	✓			
Big Creek and Middle Fork Big Creek: All waters (including tributaries) above the junction.	✓			
Canyon River and the unnamed tributary at latitude 47.3473 longitude -123.4936: All waters (including tributaries) above the junction.	✓			
Chehalis River from upper boundary of Grays Harbor at Cosmopolis (river mile 3.1, longitude 123°45'45" W) to latitude 46.6004 and longitude -123.1472 (Section 23 T13N R43W on main stem and to latitude 46.6013 and longitude -123.1253 on South Fork..	✓			
Chester Creek and the unnamed tributary at latitude 47.4196 longitude -123.7841: All waters (including tributaries) above the junction.	✓			

**TABLE 602**  
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

TABLE 602		Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)									
Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses								
Cloquallum Creek.				✓	✓						
Decker Creek.				✓	✓						
Delezenie Creek and tributaries above latitude 46.9413 longitude -123.3893.				✓	✓						
Elk River, West Branch and tributaries above latitude 46.8111 longitude -123.9774.				✓	✓						
Goforth Creek and the unnamed tributary at latitude 47.3560 longitude -123.7323:				✓	✓						
All waters (including tributaries) above the junction.				✓	✓						
Hoquiam River, East Fork and tributaries above latitude 47.0524 longitude -123.8428 (above Lyle Creek).				✓	✓						
Hoquiam River and tributaries above latitude 47.0571 longitude -123.9287 (above river mile 9.3 - Dekay Road Bridge) (upper limit of tidal influence).				✓	✓						
Hoquiam River, Middle Fork and tributaries above latitude 47.0418 longitude -123.9052.				✓	✓						
Hoquiam River mainstem (continues as west fork above east fork) from mouth to river mile 9.3 - Dekay Road Bridge) (upper limit of tidal influence).				✓	✓						
Humpfultips River and tributaries from mouth to latitude 47.0810 longitude -124.0655 (Section 4 T18N R11W).				✓	✓						
Humpfultips River and tributaries from latitude 47.0810 longitude -124.0655 (Section 4 T18N R11W) to Olympic National Forest boundary (except where designated Char).				✓	✓						
Humpfultips River and tributaries from Olympic National Forest boundary to headwaters (except where designated Char).				✓	✓						
Humpfultips River, East Fork, and the unnamed tributary at latitude 47.3821 longitude -123.7163; All waters (including tributaries) above the junction.				✓	✓						
Humpfultips River, West Fork, and Petes Creek; All waters (including tributaries) above the junction.				✓	✓						
Johns River and North Fork Johns River; All waters above the junction.				✓	✓						
Little Hoquiam River, North Fork and tributaries above latitude 47.0001 longitude -123.9269.				✓	✓						

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Little Hoquiam River and tributaries above latitude 46.9934 longitude -123.9364.	✓	✓	✓	✓
Mox Chehalis Creek and tributaries above and latitude 46.9680 longitude -123.3083.	✓	✓	✓	✓
Newskah Creek and tributaries above latitude 46.9163 longitude -123.8235 (Section 32 T16N R9W).	✓	✓	✓	✓
Satsop River and tributaries from latitude 46.9854 longitude -123.4887 (Section 6 T17N R6W) to headwaters, except where designated Char.	✓	✓	✓	✓
Satsop River, West Fork, and Robertson Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Satsop River, Middle Fork, and the unnamed tributary at latitude 47.3340 longitude -123.4451: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Wildcat Creek and tributaries above junction with Cloquallum Creek.	✓	✓	✓	✓
Wishkah River, East Fork and tributaries above latitude 47.0801 longitude -123.7560.	✓	✓	✓	✓
Wishkah River from mouth to river mile 6 (SW 1/4 SW 1/4 NE 1/4 Sec. 21-T18N-R9W).	✓	✓	✓	✓
Wishkah River from river mile 6 (SW 1/4 SW 1/4 NE 1/4 Sec. 21-T18N-R9W) to latitude 47.1089 longitude -123.7908.	✓	✓	✓	✓
Wishkah River from river and tributaries from latitude 47.1089 longitude -123.7908 to junction with West Fork. <sup>1</sup>	✓	✓	✓	✓
Wishkah River and tributaries from and including West Fork to headwaters. <sup>1</sup>	✓	✓	✓	✓
Wynoochee River and tributaries from latitude 46.9709 longitude -123.6252 to (near railroad crossing) mouth to Olympic National Forest boundary (river mile 45.9).	✓	✓	✓	✓
Wynoochee River and tributaries from Olympic National Forest boundary (river mile 45.9) to Wynoochee Dam.	✓	✓	✓	✓
Notes for WRIA 22:				

TABLE 602

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

TABLE 602		Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)						
		Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses			
Char Spawning/Rearing	Core Summer Habitat	✓	✓	✓	✓	✓	✓	✓
Spawning/Rearing	Rearing/Migration Only	✓	✓	✓	✓	✓	✓	✓
Warm Water Species	Ex Primary Cont	✓	✓	✓	✓	✓	✓	✓
	Primary Cont	✓	✓	✓	✓	✓	✓	✓
	Secondary Cont	✓	✓	✓	✓	✓	✓	✓
	Domestic Water	✓	✓	✓	✓	✓	✓	✓
	Agricultural Water	✓	✓	✓	✓	✓	✓	✓
	Stock Water	✓	✓	✓	✓	✓	✓	✓
	Wildlife Habitat	✓	✓	✓	✓	✓	✓	✓
	Habitat	✓	✓	✓	✓	✓	✓	✓
	Commerce/Navigation	✓	✓	✓	✓	✓	✓	✓
	Baiting	✓	✓	✓	✓	✓	✓	✓
	Aesthetics	✓	✓	✓	✓	✓	✓	✓

1. No waste discharge will be permitted from south boundary of Sec. 33-T21N-R8W (river mile 32.0) to headwaters.

**WRIA 23 Upper Chehalis**

Bunker Creek and tributaries.	Cedar Creek and tributaries above latitude 46.8760 longitude -123.2714 (near intersection with Highway 12).	Chehalis River, South Fork (including tributaries) above latitude 46.6014 longitude -123.1253 (near junction with State Route 6), except where specifically designated Char.	Chehalis River (including tributaries) above latitude 46.6004 longitude -123.1473 (Section 23 T13N R4W, except where specifically designated Char.)	Chehalis River mainstem from upper boundary of Grays Harbor at Cosmopolis (river mile 3.1, longitude 123°45'45" W) to latitude 46.6004 longitude -123.1473 (Section 23 T13N R4W on main stem and to latitude 46.6014 longitude -123.11253 on South Fork. <sup>1</sup> )	Chehalis River, South Fork, and the unnamed tributary at latitude 49.179 longitude -123.4127 (Sect 10 T10N R4W): All waters (including tributaries) above the junction.	Chehalis River, West Fork, and East Fork Chehalis River: All waters (including tributaries) above the junction.	Coffee Creek and tributaries.	Eight Creek and the unnamed tributary at latitude 46.6211 longitude -123.4127: All waters (including tributaries) above the junction.	Garrard Creek, South Fork, and tributaries above latitude 46.8013 longitude -123.3060.
									Hanford Creek and all tributaries from east boundary of Sec. 25-T15N-R2W (river mile 4.1) to the unnamed tributary at latitude 46.7295 longitude -122.6812 except where designated Char.

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Hanaford Creek and all tributaries from mouth to east boundary of Sec. 25-T15N-R2W (river mile 4.1) <sup>2</sup> .				
Hanaford Creek and the unnamed tributary at latitude 46°7'295 longitude -122.6812 (Sect. 4 T14N R1E); All waters (including tributaries) above the junction.	✓			
Kearney Creek and the unnamed tributary at latitude 46°6'256 longitude -122.5683; All waters (including tributaries) above the junction.	✓			
Laramie Creek and the unnamed tributary at latitude 46°7'901 longitude -122.5901; All waters (including tributaries) above the junction.	✓			
Lincoln Creek, North Fork and tributaries above latitude 46°7'370 longitude -123.7370 and (Section 36 T15N R5W).	✓			
Lincoln Creek, South Fork and tributaries above latitude 46°7'253 longitude -123.2306 (Section 6 T14N R4W).	✓			
Mima Creek and tributaries above latitude 46°8'588 longitude -123.0856.	✓			
Newaukum River and tributaries (except where designated Char).	✓			
Newaukum River, North Fork, and the unnamed tributary at latitude 46°6'793 longitude -122.6677; All waters (including tributaries) above the junction.	✓			
Newaukum River, South Fork, and Frause Creek: All waters (including tributaries) above the junction.	✓			
Pheeny Creek and the unnamed tributary at latitude 46°7'836 longitude -122.6276 (Sect. 13 T15N R1E); All waters (including tributaries) above the junction.	✓			
Porter Creek and Jamaica Day Creek: All waters above the junction.	✓			
Rock Creek (upstream of Callow): All waters above confluence with Chehalis River (Section 15, T16N, R5W), except where designated otherwise in this table.	✓			
Rock Creek (upstream of Pe Ell) and the unnamed tributary at latitude 46°5'279 longitude -123.3782 (Sect. 11 T12N R6W); All waters (including tributaries) above the junction.	✓			
Scatter Creek and tributaries from latitude 46°8'025 longitude -123.0863 (near mouth) to headwaters.	✓			
Secondary Cont				
Ex Primary Cont				
Primary Cont				
Secondary Cont				
Domestic Water				
Industrial Water				
Agricultural Water				
Stock Water				
Wildlife Habitat				
Habitat				
Commerce/Navigation				
Boating				
Boating				
Aesthetics				

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Seven Creek and the unnamed tributary at latitude 46.6192 longitude -123.3723: All waters (including tributaries) above the junction.	✓		✓	✓
Skookumchuck River and tributaries from junction with Hanaford Creek to headwaters (except where designated chart).	✓	✓	✓	✓
Skookumchuck River mainstem from mouth to Hanaford Creek.	✓	✓	✓	✓
Skookumchuck River and Hospital Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Stearns Creek's, unnamed (GIS Ripple Creek) tributary at latitude 46.5711 longitude- 122.9692 (Section 30 T13N R2W).	✓	✓	✓	✓
Stearns Creek's, unnamed tributary to West Fork at latitude 46.5824 longitude - 123.0222 (Section 26 T13N R3W).	✓	✓	✓	✓
Stillman Creek and Little Mill Creek (Sect. 23 T12N R4W): All waters (including tributaries) above the junction.	✓	✓	✓	✓
Thrash Creek and all tributaries.	✓	✓	✓	✓
Waddel Creek and tributaries.	✓	✓	✓	✓
<b>Notes for WRIA 23:</b>				
1. Chehalis River from Scammon Creek (RM 65.8) to Newaukum River (RM 75.2); dissolved oxygen shall exceed 5.0 mg/L from June 1 to September 15. For the remainder of the year, the dissolved oxygen shall meet standard criteria.				
2. Dissolved oxygen shall exceed 6.5 mg/L.				
<b>WRIA 24 Willapa</b>				
Bear River, unnamed south flowing tributary at latitude 46.3342 longitude - 123.9394 (Section 20 T10N R10W).	✓	✓	✓	✓
Bear River and tributaries above latitude 46.3284 longitude -123.3284 (Section 28 T10N R10W) to headwaters.	✓	✓	✓	✓
Canon River and tributaries above latitude 46.5879 longitude -123.8672 (Section 25 T13N R10W).	✓	✓	✓	✓
Lower Salmon Creek and tributaries.	✓	✓	✓	✓
Middle Nemah River and tributaries above latitude 46.4873 longitude -123.8855	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
(Section 35 T12N R10W).				
Mill Creek and tributaries above latitude 46.6448 longitude -123.6251 (Section 1 T13N R8W).	✓	✓	✓	✓
Naselle River from O'Conner Creek to headwaters (including tributaries).	✓	✓	✓	✓
North Nemah River and tributaries above latitude 46.5172 longitude -123.8665 (Section 14 T12N R10W).	✓	✓	✓	✓
North River and Fall River: All waters above the junction (Section 25 T15N R7W).	✓	✓	✓	✓
Pioneer Creek and tributaries above latitude 46.8149 longitude -123.5502 (Section 4 T15N R7W).	✓	✓	✓	✓
Salmon Creek and tributaries above latitude 46.8904 longitude -123.6829 (Section 9 T16N R8W).	✓	✓	✓	✓
Smith Creek and tributaries above latitude 46.7554 longitude -123.8424 (Section 30 T15N R9W).	✓	✓	✓	✓
South Naselle River above latitude 46.3499 longitude -123.8093 (Section 16 T10N R9W).	✓	✓	✓	✓
South Nemah River above latitude 46.4406 longitude -123.8630 (Section 13 T11N R10W).	✓	✓	✓	✓
Stringer Creek and tributaries (Section 25 T13N R8W).	✓	✓	✓	✓
Willapa River South Fork and tributaries above latitude 46.6479 longitude -123.7267 (Section 6 T13N R8W).	✓	✓	✓	✓
Willapa River and Oxbow Creek: All waters upstream of the junction (Section 25 T13N R8W).	✓	✓	✓	✓
Williams Creek and tributaries above latitude 46.5284 longitude -123.8668 (Section 14 T12N R10W).	✓	✓	✓	✓
<b>WRIA 25 Grays-Elochoman</b>				
Abernathy Creek and Cameron Creek: All waters above the junction.	✓	✓	✓	✓
Coal Creek and Tributaries above and latitude 46.1839 longitude -123.0338 (just	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
below Harmony Creek).				
Elochoman River and tributaries from mouth to latitude 46.2289 longitude -123.3597 (Section 30 T9N R6W).				
Elochoman River and tributaries from latitude 46.2289 longitude -123.3597 (Section 30 T9N R6W) to headwaters.				
Germany Creek from latitude 46.1946 longitude -123.1259 (near mouth) to headwaters.				
Grays River from latitude 46.3454 longitude -123.6099 to headwaters.				
Hull Creek and tributaries.				
Mill Creek and Tributaries above latitude 46.1906 longitude -123.1802 (near mouth).				
Skomokawa Creek and Wilson Creek; All waters above the junction.				
<b>WRIA 26 Cowlitz</b>				
Cispus River and tributaries.				
Coweeaman River and tributaries from mouth to latitude 46.1405 longitude -122.8532 (Section 31 T8N R1W).				
Coweeaman River and tributaries from latitude 46.1405 longitude -122.8532 Section 31 T8N R1W) to Mulholland Creek (river mile 18.4).				
Coweeaman River and tributaries from Mulholland Creek (river mile 18.4) to headwaters.				
Cowlitz River and tributaries from mouth to latitude 46.2622 longitude -122.9001 (Section 14 T9N R2W).				
Cowlitz River from latitude 46.2622 longitude -122.9001 (Section 14 T9N R2W) base of Riffe Lake Dam (river mile 52.0).				
Cowlitz River, and tributaries from base of Riffe Lake Dam (river mile 52.0) to headwaters.				
Green River and tributaries.				
Toutle River and tributaries from mouth to Green River on North Fork.				

TABLE 602  
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

TABLE 602		Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)						
		Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses			
Toutle River, North Fork, and tributaries from Green River to headwaters.								
Toutle River, South Fork, and tributaries.								
<b>WRIA 27 Lewis</b>								
Alec Creek and all tributaries.	✓							
Big Creek and all tributaries.	✓							
Chickoon Creek and all tributaries.	✓							
Clear Creek and all tributaries.	✓							
Clearwater Creek and unnamed creek: All waters (including tributaries) above the junction (Sect. 15 T8N R6E – below junction of Smith and Muddy Creeks).	✓							
Curly Creek and all tributaries.	✓							
Cussed Hollow Creek and all tributaries.	✓							
Kalama River east of Interstate 5 to Kalama River Falls (river mile 10.4) (including tributaries).	✓							
Kalama River from lower Kalama River Falls (river mile 10.4) to headwaters (including tributaries).	✓							
Lewis River from Houghton Creek (including tributaries) to Lake Mervin.	✓							
Lewis River and Pass Creek: All waters (including tributaries) above the junction.	✓							
Lewis River's unnamed tributaries at latitude 46.1122 longitude -121.9174 (Sect. 11 T7N R7E).	✓							
Lewis River, East Fork, from and including Mason Creek to Multon Falls (river mile 24.6) including tributaries.	✓							
Lewis River, East Fork, and tributaries from Multon Falls (river mile 24.6) to headwaters.	✓							
Little Creek and all tributaries.	✓							
Panamaker Creek and all tributaries.	✓							
Pin Creek and all tributaries.	✓							
Pine Creek and all tributaries.	✓							

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Quartz Creek and all tributaries.			✓	✓
Rush Creek and all tributaries.			✓	✓
Spencer Creek and all tributaries.			✓	✓
Steamboat Creek and all tributaries.			✓	✓
Tillicum Creek and all tributaries.			✓	✓
<b>WRIA 28 Salmon-Washougal</b>				
Burnt Bridge Creek.	✓		✓	✓
Duncan Creek and unnamed tributary just east of Duncan Creek: All waters north of highway 14.			✓	✓
Green Leaf Creek and Hamilton Creek: All waters above the junction.			✓	✓
Hardy Creek and tributaries above lake inlet.			✓	✓
Lawton Creek and tributaries above latitude 45.5708 longitude -122.2376 (Section 13).	✓		✓	✓
Salmon Creek from latitude 45.7176 longitude -122.6958 (below junction with Cougar Creek) and tributaries.			✓	✓
Wasbough River from latitude 45.5883 longitude -122.3711 (Section 7 TIN R4E) (including tributaries).	✓		✓	✓
Woodward Creek and tributaries north of highway 14.	✓		✓	✓
<b>WRIA 29 Wind-White Salmon</b>				
Bear Creek (tributary to White Salmon River) below National Forest Boundary	✓		✓	✓
Buck Creek and all tributaries (Two Buck Creeks drain to the White Salmon River, the mouth of this creek is found in Section 21 T7N R10E).	✓		✓	✓
Carson Creek.	✓		✓	✓
Catherine Creek and tributaries.	✓		✓	✓
Cave Creek below National Forest Boundary	✓		✓	✓
Gilmer Creek and all tributaries, except as noted otherwise.	✓		✓	✓

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Gilmer Creek's unnamed tributary in Sections 29 and 32 T15N R11E.			✓	✓
Gotchen Creek and all tributaries, except those waters in or above the Gifford Pinchot National Forest.	✓		✓	✓
Gotchen Creek and all tributaries that are in or above the Gifford Pinchot National Forest.	✓		✓	✓
Green Canyon Creek and all tributaries.	✓		✓	✓
Jewett Creek and tributaries.	✓		✓	✓
Killowatt Canyon Creek below National Forest Boundary	✓		✓	✓
Little White Salmon River and tributaries downstream of National Forest boundary.		✓	✓	✓
Little White Salmon River and tributaries in or above National Forest boundary.	✓	✓	✓	✓
Major Creek and tributaries.	✓	✓	✓	✓
Morrison Creek and all tributaries.	✓	✓	✓	✓
Rattlesnake Creek and the unnamed tributary at latitude 45.8512 longitude -121.4081; All waters (including tributaries) above the junction.	✓	✓	✓	✓
Rock Creek and tributaries downstream of Gifford Pinchot National Forest boundaries.		✓	✓	✓
Spring Creek below National Forest Boundary	✓		✓	✓
Trout Lake Creek and all tributaries below Trout Lake.	✓		✓	✓
Trout Lake Creek and all tributaries at and above Trout Lake.	✓		✓	✓
White Salmon River (including all natural tributaries) occurring downstream of National Forest boundary, not otherwise designated Char.		✓	✓	✓
White Salmon River (including all natural tributaries) occurring in or upstream of National Forest boundary, not otherwise designated Char.		✓	✓	✓
White Salmon River drainage's unnamed tributaries that terminate in Section 13 T6NR10E (latitude 46.0055 longitude 121.4991); all portions occurring downstream of the Gifford Pinchot National Forest boundary.	✓	✓	✓	✓
White Salmon River drainage's unnamed tributaries that terminate in Section 13	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
T6NR10E (latitude 46.0055 longitude 121.4991); all portions occurring upstream of the Gifford Pinchot National Forest boundary.				
White Salmon River and Cascade Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Wind River and tributaries downstream of Gifford Pinchot National Forest boundaries.	✓		✓	✓
Wind River and tributaries in or upstream of Gifford Pinchot National Forest.	✓		✓	✓
<b>WRIA 30 Klickitat</b>				
Clearwater Creek and Trappers Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Cougar Creek and Big Muddy Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Diamond Creek and Caitin Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Diamond Fork's unnamed tributaries at latitude 46.4205 longitude -121.1562.	✓		✓	✓
Diamond Fork's unnamed tributaries at latitude 46.4355 longitude -121.1590 (outlet of Maiden Springs).	✓		✓	✓
Fish Lake Stream and all tributaries.	✓		✓	✓
Frasier Creek and Outlet Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Klickitat River mainstem from mouth to Little Klickitat River (river mile 19.8).	✓		✓	✓
Klickitat River from Little Klickitat River (river mile 19.8) to Diamond Fork.	✓		✓	✓
Klickitat River and all tributaries above the junction with Diamond Fork.	✓		✓	✓
Little Klickitat River and all tributaries above the junction with Cozy Nook Creek.	✓		✓	✓
Little Muddy Creek and all tributaries.	✓		✓	✓
McCreedy Creek and all tributaries.	✓		✓	✓
<b>WRIA 31 Rock-Glade</b>				

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Squaw Creek and unnamed tributary at and latitude 45.8758 longitude -120.4324 (Section 33 T5N R19E); all waters above junction.			✓	✓
Rock Creek and Quartz Creek; all waters above junction.			✓	✓
<b>WRIA 32 Walla Walla</b>				
Blue Creek and tributaries above latitude 46.0581 and longitude 118.0971	✓			
Coppie Creek, North and South Forks (including tributaries).			✓	✓
Dry Creek and tributaries above junction with unnamed creek at latitude 46.1197 longitude -118.1378 (Seaman Rd).	✓		✓	✓
Mill Creek from mouth to 13th Street Bridge in Walla Walla (river mile 6.4). <sup>1</sup>	✓		✓	✓
Mill Creek from 13th Street Bridge in Walla Walla (river mile 6.4) to latitude 46.0862 longitude -118.2395 in north channel and latitude 46.0800 longitude -118.2541 in south channel.	✓		✓	✓
Mill Creek from latitude 46.0862 longitude -118.2395 in north channel and latitude 46.0800 longitude -118.2541 in south channel to headwaters (including tributaries) except where otherwise designated Char.	✓		✓	✓
Mill Creek and Railroad Canyon: All waters (including tributaries) above the junction up to city of Walla Walla Waterworks Dam (river mile 21.6).	✓		✓	✓
Mill Creek and tributaries from city of Walla Walla Waterworks Dam (river mile 21.6) to headwaters (including upstream and downstream of where Mill Creek flows into Oregon). <sup>2</sup>	✓		✓	✓
Touchet River above latitude 46.3172 longitude -118.0000 (Sect. 30 T10N R38E) (including tributaries) not otherwise designated Char.	✓		✓	✓
Touchet River, North Fork, and Wolf Creek: All waters (including tributaries) above the junction.	✓		✓	✓
Touchet River, South Fork, and the unnamed tributary at latitude 46.2307 longitude -117.9397; All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓		✓	✓
Touchet River, South Fork, and the unnamed tributary at latitude 46.2307 longitude -117.9397; All waters (including tributaries) above the junction that are	✓		✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
in or above the Umatilla National Forest.				
Walla Walla River from mouth to Lowden (Dry Creek at river mile 27.2).	✓	✓	✓	✓
Walla Walla River from Lowden (Dry Creek at river mile 27.2) to Oregon border (river mile 40). <sup>3</sup>	✓	✓	✓	✓
Whiskey Creek, and unnamed tributary system at and latitude 46.2176 longitude -118.0667 (Section 33 T9N R38E), all waters above junction.	✓	✓	✓	✓
<b>Notes for WRIA 32:</b>				
1. Dissolved oxygen concentration shall exceed 5.0 mg/l.				
2. No waste discharge will be permitted for Mill Creek and tributaries from city of Walla Walla Waterworks Dam (river mile 21.6) to headwaters.				
3. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
<b>WRIA 33 Lower Snake</b>				
Snake River from mouth to Washington-Idaho-Oregon border (river mile 176.1). <sup>1</sup>	✓	✓	✓	✓
<b>Notes for WRIA 33:</b>				
1. Below Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ . Special condition - special fish passage exemption as described in WAC 173-201A-200 (1)(f).				
<b>WRIA 34 Palouse</b>				
Palouse River from Palouse Falls to south fork (Colfax, river mile 89.6).	✓	✓	✓	✓
Palouse River mainstem from mouth to Palouse Falls	✓	✓	✓	✓
Palouse River from south fork (Colfax, river mile 89.6) to Idaho border (river mile 123.4). <sup>1</sup>	✓	✓	✓	✓
<b>Notes on WRIA 34:</b>				
1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				

WRIA 35 Middle Snake	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>All streams flowing into Oregon from North Fork Wenaha River east to, and including, Fairview Creek.</b>				
Asotin River from and including Charley Creek to headwaters (including tributaries) not otherwise designated Char.	✓			
Asotin River, North Fork, and all tributaries above Lick Creek, except those waters in or above the Umatilla National Forest.	✓			
Asotin River, North Fork, and all tributaries above Lick Creek that are in or above the Umatilla National Forest.	✓			
Charley Creek and the unnamed tributary at latitude 46.2851 longitude -117.3216: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓			
Charley Creek and the unnamed tributary at latitude 46.2851 longitude -117.3216: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.	✓			
Cottonwood Creek and the unnamed tributary at latitude 46.0678 longitude -117.3015 (Section 21 T7N R44E) all waters above the junction.	✓			
Crooked Creek (including tributaries) from Oregon Border to headwaters.	✓			
Cummings Creek and all tributaries, except those waters in or above the Umatilla National Forest.	✓			
Cummings Creek and all tributaries that are in or above the Umatilla National Forest.	✓			
George Creek, above and including Coombs Canyon (including tributaries).	✓			
George Creek and the unnamed tributary at latitude 46.292 longitude -117.1874 (Section 29 T9N R45E), all waters above junction not otherwise designated Char.	✓			
Grande Ronde River from mouth to Oregon border (river mile 3). <sup>1</sup>	✓			
Grouse Creek and tributaries from Oregon border.	✓			
Grub Canyon and all tributaries.	✓			

Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Hixon Canyon and all tributaries.	✓	✓	✓	✓
Little Tucannon River and all tributaries.	✓	✓	✓	✓
Menatchee Creek and West Fork Menatchee Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Pataha Creek and Dry Pataha Creek: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓	✓	✓	✓
Pataha Creek and Dry Pataha Creek: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.	✓	✓	✓	✓
Snake River from mouth to Washington-Idaho-Oregon border (river mile 176.1). <sup>2</sup>	✓			✓
Tennille Creek, all waters above junction with unnamed creek at latitude 46.2156 longitude -117.0386 (Section 33 T9N R46E).	✓			✓
Tucannon River and tributaries from latitude 46.4592 longitude -117.8461 (Section 6, T11N R40E) to Panjab Creek (except where designated char).	✓			✓
Tucannon River mainstem from between Little Tucannon River and Panjab Creek.	✓			✓
Tucannon River and Panjab Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Tucannon River's unnamed tributaries in Sect. 1 T10N R40E and in Sect. 35 T11N R40E (South of Marenco): all waters above their forks.		✓	✓	✓
Tumalam Creek and the unnamed tributary at latitude 46.3594 longitude -117.6488: All waters (including tributaries) above the junction, except those waters in or above the Umatilla National Forest.	✓	✓	✓	✓
Tumalam Creek and the unnamed tributary at latitude 46.3594 longitude -117.6488: All waters (including tributaries) above the junction that are in or above the Umatilla National Forest.	✓	✓	✓	✓
Willow Creek and the unnamed tributary at latitude 46.4182 longitude -117.8314: All waters (including tributaries) above the junction.	✓	✓	✓	✓

Notes for WRIA 35:

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature

TABLE 602

## Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Char Spawning /Rearing	Warm Water Species	Ex Primary Cont	Secondary Cont	Stock Water
Core Summer Habitat	Redband Trout	Domestic Water	Industrial Water	Agricultural Water
Spawning/Rearing	Spawning/Migration	Domestic Cont	Industrial Cont	Agribusiness
Rearing/Migration Only	Rearing/Migration	Secondary Cont	Industrial Cont	Commercial Navigation
Core Summer Habitat	Redband Trout	Domestic Cont	Industrial Cont	Boating
Char Spawning /Rearing	Warm Water Species	Ex Primary Cont	Secondary Cont	Aesthetics

increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed t = 34/(T + 9).

- The following two notes apply:
  - Below Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed t = 34/(T + 9). Special condition - special fish passage exemption as described in WAC 173-201A-000 (1)(f).
  - Above Clearwater River (river mile 139.3). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to any single source or 1.1°C due to all such activities combined.

**WRIA 36 Equiazel Coulee**

There are no specific waterbody entries for this WRIA.

**WRIA 37 Lower Yakima**

Ahtanum Creek North Fork's unnamed tributaries at latitude 46.5465 longitude - 120.8857.	✓	✓	✓	✓
Ahtanum Creek North Fork's unnamed tributaries at latitude 46.5395 longitude - 120.9851.	✓	✓	✓	✓
Ahtanum Creek, between junction with South Fork and junction of North and Middle Forks (including tributaries) except where designated Char Ahtanum Creek, North Fork, and Middle Fork Ahtanum Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Ahtanum Creek, South Fork, and all tributaries.	✓	✓	✓	✓
Carpenter Gulch and all tributaries.	✓	✓	✓	✓
Foundation Creek and all tributaries.	✓	✓	✓	✓
Nasty Creek and all tributaries.	✓	✓	✓	✓
Sulphur Creek.	✓	✓	✓	✓
Yakima River from mouth to Cle Elum River (river mile 185.6) except where specifically designated otherwise in Table 602. <sup>1</sup>				✓

**Notes for WRIA 37:**

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TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
1. Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $= 34/(T + 9)$ .				
<b>WRIA 38 Naches</b>				
American River and all tributaries.	✓			
Barton Creek and all tributaries.	✓			
Bumping Lake's unnamed tributaries at latitude 46.8850 longitude -121.2779.	✓			
Bumping River's unnamed tributaries at latitude 46.9317 longitude -121.2067 (outlet of Flat Iron Lake).	✓			
Bumping River and tributaries downstream of the upper end of Bumping Lake (except where designated char).	✓			
Bumping River (and tributaries) upstream of Bumping Lake.	✓			
Cedar Creek and all tributaries.	✓			
Clear Creek and tributaries (including Clear Lake).	✓			
Crow Creek and all tributaries.	✓			
Deep Creek and all tributaries.	✓			
Goat Creek and all tributaries.	✓			
Granite Creek and all tributaries.	✓			
Indian Creek and all tributaries.	✓			
Little Naches River and Bear Creek: All waters (including tributaries) above the junction.	✓			
Little Naches River, South Fork and all tributaries.	✓			
Naches River and tributaries from latitude 46.7640 longitude -120.8286 (just upstream of Cougar Canyon) to Snoqualmie National Forest boundary (river mile 35.7) (except where designated Char).	✓		✓	
Naches River from Snoqualmie National Forest boundary (river mile 35.7) to headwaters (except where designated Char).	✓		✓	

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Pileup Creek and all tributaries.				✓
Quartz Creek and all tributaries.				✓
Rattlesnake Creek: All waters above the junction with North Fork Rattlesnake Creek.				✓
Rattlesnake Creek, North Fork, all waters above latitude 46.8107 longitude 121.0694 (from and including the unnamed tributary just above junction with mainstem).				✓
Sand Creek and all tributaries.				✓
Sunrise Creek (latitude 46.9042 longitude -121.2431) and all tributaries				✓
Tieton River and tributaries (except where otherwise designated).				✓
Tieton River, North Fork (including tributaries) above the junction at Clear Lake.				✓
Tieton River, South Fork, and all tributaries.				✓
<b>WRIA 39 Upper Yakima</b>				
Cle Elum River from mouth to latitude 47.3805 longitude -121.0983 (above Little Salmon la Sac Creek).	✓			✓
Cle Elum River and all tributaries from junction with unnamed tributary at and latitude 47.3805 longitude -121.0983 to headwaters.	✓			✓
Indian Creek and tributaries downstream of Wenatchee National Forest boundary below.		✓		✓
Indian Creek and tributaries in or above National Forest boundary.	✓			✓
Jack Creek and tributaries downstream of Wenatchee National Forest boundary below.		✓		✓
Jack Creek and tributaries in or above National Forest boundary.	✓			✓
Little Kachess Lake (narrowest point dividing Kachess Lake from Little Kachess Lake) and all tributaries.	✓			✓
Manastash Creek: All waters above the junction of the North and South Forks that are downstream of the Wenatchee National Forest boundary.	✓			✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Manastash Creek: All waters above the junction of the North and South Forks that are in or above the Wenatchee National Forest.	✓	✓	✓	✓
Manastash Creek mainstem from mouth to junction of North and South Forks.	✓	✓	✓	✓
Manastash Creek, tributaries to mainstem, between the mouth and the junction of North and South Forks.	✓	✓	✓	✓
Swauk Creek mainstem from mouth to junction with First Creek.	✓	✓	✓	✓
Swauk Creek from junction with First Creek to Wenatchee National Forest (including tributaries).	✓	✓	✓	✓
Taneum Creek, tributaries to mainstem, from mouth to Wenatchee National Forest boundary.	✓	✓	✓	✓
Taneum Creek mainstem from mouth to Wenatchee National Forest boundary.	✓	✓	✓	✓
Teanaway River mainstem from mouth to West Fork Teanaway River.	✓	✓	✓	✓
Teanaway River, tributaries to mainstem, from mouth to West Fork Teanaway River.	✓	✓	✓	✓
Teanaway River, West Fork, and tributaries downstream of the Wenatchee National Forest.	✓	✓	✓	✓
Teanaway River, West Fork, and tributaries upstream of the Wenatchee National Forest.	✓	✓	✓	✓
Teanaway River, North Fork, and tributaries from junction with West Fork to Jungle Creek that are downstream of the Wenatchee National Forest boundary (except where designated otherwise).	✓	✓	✓	✓
Teanaway River, North Fork, and tributaries from junction with West Fork to Jungle Creek that are in or above the Wenatchee National Forest boundary (except where designated otherwise).	✓	✓	✓	✓
Teanaway River, North Fork, and all tributaries above and including Jungle Creek.	✓	✓	✓	✓
Yakima River mainstem from mouth to Cle Elum River (river mile 185.6) except where specifically designated otherwise in Table 602. <sup>1</sup>	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Yakima River and tributaries from Cle Elum River (river mile 185.6) to headwaters (except where designated otherwise).				
Yakima River and tributaries above the unnamed tributary (latitude 47°29'27" longitude -121°29'71") entering the Yakima River in Sect 25 T21 NR 12E.				
<b>Notes for WRIA 39:</b>				
1. Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $= \frac{34}{(T + 9)}$ .				
<b>WRIA 40 Alkaki-Squilleback</b>				
There are no specific water body entries for this WRIA.				
<b>WRIA 41 Lower Crab</b>				
Crab Creek and tributaries.				
<b>WRIA 42 Grand Coulee</b>				
Crab Creek and tributaries.				
<b>WRIA 43 Upper Crab-Wilson</b>				
Crab Creek and tributaries.				
<b>WRIA 44 Moses Coulee</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 45 Wenatchee</b>				
Chiawaukum Creek from junction with Skinney Creek to headwaters (including tributaries),	✓			
Chiwawa River from mouth to Chickamin Creek (including tributaries).	✓			
Chiwawa River (and all tributaries) above and including Chickamin Creek.	✓			
Chumstick Creek and tributaries downstream of the National Forest boundary (not otherwise designated char).		✓		
Chumstick Creek and tributaries in or above the National Forest boundary (not otherwise designated char).	✓			

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Dry Creek and Chumstick Creek: All waters (including tributaries) above the junction, except those waters in or above the Wenatchee National Forest.	✓	✓	✓	✓
Dry Creek and Chumstick Creek: All waters (including tributaries) above the junction that are in or above the Wenatchee National Forest.	✓	✓	✓	✓
Eagle Creek and the unnamed tributary at latitude 47.6544 longitude -120.5165: All waters (including tributaries) above the junction, except those waters in or above the Wenatchee National Forest.	✓	✓	✓	✓
Eagle Creek and the unnamed tributary at latitude 47.6544 longitude -120.5165: All waters (including tributaries) above the junction that are in or above the Wenatchee National Forest.	✓	✓	✓	✓
Icicle Creek (including tributaries) from mouth to confluence National Forest Boundary.	✓	✓	✓	✓
Icicle Creek (including tributaries) from National Forest boundary to confluence with Jack Creek.	✓	✓	✓	✓
Icicle Creek above and including Jack Creek (including all tributaries).	✓	✓	✓	✓
Ingalls Creek (including tributaries).	✓	✓	✓	✓
Mission Creek from latitude 47.5583 longitude -120.5745 to headwaters (including tributaries) downstream of the National Forest boundary.	✓	✓	✓	✓
Mission Creek from latitude 47.5583 longitude -120.5745 to headwaters (including tributaries) in or above the National Forest boundary.	✓	✓	✓	✓
Peshastin Creek from National Forest Boundary to headwaters (including tributaries) except where designated char.	✓	✓	✓	✓
Peshastin Creek from junction with Mill Creek to National Forest Boundary (including tributaries).	✓	✓	✓	✓
Second Creek and the unnamed tributary at latitude 47.7384 longitude -120.5935: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Van Creek and the unnamed tributary at latitude 47.6722 longitude -120.5373: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Wenatchee River mainstem between Peshastin Creek and the boundary of the	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Wenatchee National Forest (river mile 27.1).				
Wenatchee River from Wenatchee National Forest boundary (river mile 27.1) to Chiwawa River (including tributaries) except where designated otherwise.	✓		✓	✓
Wenatchee River and all tributaries upstream of Minnow Creek (above Chiwawa River junction).	✓		✓	✓
<b>WRIA 46 Entiat</b>				
Brennegan Creek and the unnamed tributary at and latitude 47.9098 longitude -120.4185; All waters (including tributaries) above the junction.	✓			
Entiat River and tributaries occurring below the National Forest boundary from and including the Mad River to Wenatchee National Forest boundary on the mainstem Entiat River (river mile 20.5).	✓			
Entiat River and all tributaries above the unnamed creek at and latitude 47.9135 longitude -120.4942 (below Fox Creek).	✓			
Entiat River's unnamed tributaries upstream of latitude 47.9106 longitude -121.5010 (below Fox Creek).	✓			
Gray Canyon, North Fork, and South Fork Gray Canyon: All waters (including tributaries) above the junction.	✓			
Hornet Creek and all tributaries.	✓			
Mad River and all tributaries above latitude 47.8015 longitude -120.4920 (below Young Creek).	✓			
Mud Creek and Switchback Canyon: All waters (including tributaries) above the junction.	✓			
Potato Creek and Gene Creek: All waters above the junction.	✓			
Preston Creek and South Fork Preston Creek: All waters (including tributaries) above the junction.	✓			
Stormy Creek and the unnamed tributary at latitude 47.8387 longitude -120.3865:	✓			
All waters (including tributaries) above the junction.				
Tillicum Creek and Indian Creek: All waters (including tributaries) above the	✓			

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
junction.				
<b>WRIA 47 Chelan</b>				
Stehekin River.	✓	✓	✓	✓
<b>WRIA 48 Methow</b>				
Bear Creek from mouth to headwaters (including tributaries) in or above the National Forest boundary.	✓			
Bear Creek from mouth to headwaters (including tributaries) downstream of the National Forest boundary.	✓			
Beaver Creek and South Fork Beaver Creek: All waters (including tributaries) above the junction.	✓			
Big Hidden Lake and all tributaries, and the outlet stream that flows into the East Fork Pasayten River.	✓	✓	✓	✓
Boulder Creek and Pebble Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Buttermilk Creek and all tributaries.	✓	✓	✓	✓
Chewuch River and tributaries from mouth to headwaters (except where designated otherwise).	✓	✓	✓	✓
Chewuch River and tributaries above Buck Creek at Section 30, T38, R22E..	✓	✓	✓	✓
Eagle Creek and all tributaries.	✓	✓	✓	✓
Early Winters Creek (including tributaries) from mouth to headwaters.	✓	✓	✓	✓
Eureka Creek and all tributaries.	✓	✓	✓	✓
Goat Creek above the junction with Roundup Creek to headwaters (including tributaries).	✓	✓	✓	✓
Gold Creek and all tributaries, except those waters in or above the Okanogan National Forest.	✓	✓	✓	✓
Gold Creek and all tributaries that are in or above the Okanogan National Forest.	✓	✓	✓	✓
Lake Creek and all tributaries.	✓	✓	✓	✓

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
<b>Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)</b>				
Libby Creek and Hornel Draw: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Little Bridge Creek and tributaries	✓	✓	✓	✓
Lost River Gorge and all tributaries upstream of junction with Sunset Creek.	✓	✓	✓	✓
Methow River from mouth to junction with Twisp River.	✓	✓	✓	✓
Methow River from junction with Twisp River to Chewuch River (river mile 50.1).	✓	✓	✓	✓
Methow River and tributaries from Chewuch River (river mile 50.1) to headwaters (except where designated char.)	✓	✓	✓	✓
Methow River, West Fork, (including tributaries) from and including Robinson Creek and its tributaries to headwaters (except unnamed tributary above mouth at latitude 48.6594 longitude -120.5382.	✓	✓	✓	✓
Pipestone Canyon Creek and all tributaries below Campbell Lake.	✓	✓	✓	✓
Pipestone Canyon Creek and all tributaries above Campbell Lake, Campbell Lake, and all tributaries to Campbell Lake.	✓	✓	✓	✓
Smith Canyon Creek and Elderberry Canyon: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Twisp River from mouth to War Creek.	✓	✓	✓	✓
Twisp River and War Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Wolf Creek from and including unnamed tributary at latitude 48.4849 longitude -120.3180 to headwaters (including tributaries).	✓	✓	✓	✓
<b>WRIA 49 Okanogan</b>				
Okanogan River.	✓	✓	✓	✓
<b>WRIA 50 Foster</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 51 Nespelem</b>				
There are no specific waterbody entries for this WRIA.				

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
<b>WRIA 52 Sanpoil</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 53 Lower Lake Roosevelt</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 54 Lower Spokane</b>				
Spokane River from mouth to Long Lake Dam (river mile 33.9). <sup>1</sup>	✓	✓	✓	✓
Spokane River from Long Lake Dam (river mile 33.9) to Nine Mile Bridge (river mile 58.0). <sup>2</sup>	✓	✓	✓	✓
Spokane River from Nine Mile Bridge (river mile 58.0) to the Idaho border (river mile 96.5). <sup>3</sup>	✓	✓	✓	✓
<b>Notes for WRIA 54:</b>				
1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
2. a. The average euphotic zone concentration of total phosphorus (as P) shall not exceed 25µg/L during the period of June 1 to October 31. b. Temperature shall not exceed a 1-DMax of 20.0°C, due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$ .				
3. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time exceed $t = 34/(T + 9)$ .				
<b>WRIA 55 Little Spokane</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 56 Hangman</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 57 Middle Spokane</b>				
Lake Creek and all tributaries.	✓	✓	✓	✓

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Spokane River from Nine Mile Bridge (river mile 58.0) to the Idaho border (river mile 96.5). <sup>1</sup>				
<b>Notes on WRIA 57:</b>				
1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time exceed $F=34/(T+9)$ .				
<b>WRIA 58 Middle Lake Roosevelt</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 59 Colville</b>				
Colville River.				
<b>WRIA 60 Kettle</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 61 Upper Lake Roosevelt</b>				
There are no specific waterbody entries for this WRIA.				
<b>WRIA 62 Pend Oreille</b>				
All streams flowing into Idaho from Bath Creek (latitude 48.5865 longitude 117.0351) to the Canadian border.				
Calispell Creek (including tributaries) from Small Creek to Calispell Lake.				
Calispell Lake and all tributaries.				
Cedar Creek from latitude 48.7500 longitude -117.4349 (including tributaries) to headwaters; all waters that are in the Colville National Forest.				
Cedar Creek from latitude 48.7500 longitude -117.4349 to (including tributaries) to headwaters; all waters that are outside the Colville National Forest.				
Cedar Creek from mouth to latitude 48.7500 longitude -117.4349 (including tributaries) in or above Colville National Forest boundary.				
Cedar Creek from mouth to latitude 48.7500 longitude -117.4349 (including tributaries) downstream of the Colville National Forest.				

	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Harvey Creek and Paupac Creek: All waters (including tributaries) above the junction.	✓	✓	✓	✓
Indian Creek from mouth to headwaters.	✓	✓	✓	✓
Le Clerc Creek, East Branch, and West Branch Le Clerc Creek: All waters (including tributaries) above the junction, except those waters in or above the Colville National Forest.	✓	✓	✓	✓
Le Clerc Creek, East Branch, and West Branch Le Clerc Creek: All waters (including tributaries) above the junction that are in or above the Colville National Forest.	✓	✓	✓	✓
Le Clerc Creek from mouth to junction with West Branch le Clerc Creek (including tributaries).	✓	✓	✓	✓
Mill Creek from mouth to headwaters (including tributaries).	✓	✓	✓	✓
Pend Oreille River from Canadian border (river mile 16.0) to Idaho border (river mile 87.7). <sup>1</sup>	✓	✓	✓	✓
Slate Creek from mouth to headwaters (including tributaries).	✓	✓	✓	✓
Small Creek and all tributaries, except those waters in or above the National Forest.	✓	✓	✓	✓
Small Creek and all tributaries that are in or above the National Forest.	✓	✓	✓	✓
South Salmo River and all tributaries.	✓	✓	✓	✓
Sullivan Creek above junction with Harvey Creek (including tributaries) to headwaters.	✓	✓	✓	✓
Tacoma Creek, South Fork, upstream of Tacoma Creek and downstream of the Colville National Forest boundary (including tributaries).	✓	✓	✓	✓
Tacoma Creek, South Fork, and tributaries upstream of the Colville National Forest boundary (including tributaries).	✓	✓	✓	✓

**Notes for WRIA 62:**

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed

TABLE 602	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses
Use Designations for Fresh Waters by Water Resource Inventory Area (WRIA)				
Char Spawning/Rearing				
Core Summer Habitat				
Spawning/Rearing				
Rearing/Migration Only				
Redband Trout				
Ex Primary Cont				
Warm Water Species				
Ex Primary Cont				
Second Day Cont				
Domestic Water				
Industrial Water				
Agicultural Water				
Stock Water				
Wildlife Habitat				
Habitat				
Commerce/Navigation				
Boating				
Aesthetics				

$t = 34/(T + 9)$ .

**WSR 06-23-121**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 06-08—Filed November 21, 2006, 10:07 a.m., effective December 22, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Ecology was directed by the 2005 legislature to revise the existing well construction and licensing rules. Additionally, ecology met with the well drilling technical advisory group to make other revisions that improve organization and readability, addresses technical issues and other driller concerns, makes the rule easier to understand, and enhances public health and welfare. This rule making will adopt these amendments to chapter 173-160 WAC, Minimum standards for construction and maintenance of wells and chapter 173-162 WAC, Rules and regulations governing the regulation and licensing of well contractors and operators.

Citation of Existing Rules Affected by this Order: Repealing WAC 173-162-140; and amending chapters 173-160 and 173-162 WAC.

Statutory Authority for Adoption: Chapter 18.104 RCW.

Adopted under notice filed as WSR 06-17-129 on August 21, 2006.

Changes Other than Editing from Proposed to Adopted Version:

- In WAC 173-160-171, the term "or building drain" was deleted and a new sentence was added identifying the point from which the siting setback shall be measured.
- In WAC 173-160-271 (3)(b), the length of time that a temporary dewatering well can be in place has changed from eighteen months to twelve months.
- In WAC 173-160-271 (3)(b)(i), all temporary dewatering wells regardless of depth will have a three foot surface seal.
- In WAC 173-160-271 (3)(b)(ii), the citation that "temporary dewatering wells that are installed deeper than twenty-five feet must have a minimum of five feet of surface seal" was deleted.
- In WAC 173-160-371, the phrase "Within a consolidated formation" was added at the beginning for clarity.
- In WAC 173-160-381 (1) and (2), the term "drilled" was removed from the beginning of the citation for clarity.
- In WAC 173-160-410(2), the term "geotechnical information" was deleted and replaced with the term "structural properties" to clarify the definition.
- In WAC 173-160-450, a typographical error for the citation of the sealing guidelines was corrected.
- In WAC 173-160-460 (1)(a)(iii), the word "or" was added to separate the two decommissioning methods.
- In WAC 173-160-460 (2)(b), the requirement of capping a well after it has been decommissioned was deleted.
- In WAC 173-162-030, the term "geotechnical information" was deleted and replaced with the term "structural properties" to clarify the definition.

A final cost-benefit analysis is available by contacting Richard Szymarek, Department of Ecology, P.O. Box 47600,

Olympia, WA 98504, phone (360) 407-6648, fax (360) 407-7162, e-mail rszy461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 9, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 26, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 35, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 35, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 21, 2006.

Jay J. Manning  
Director

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-030 How are the words and phrases used in this chapter? ((1) "Abandoned well" means a well that is unused, unmaintained, or is in such disrepair as to be unusable.**

**((2) "Access port" is a 1/2 to 2 inch tapped hole or tube equipped with a screw cap, which provides access to the inner casing, for measurement of the depth to water surface. An access port also means a removable wellcap.**

**((3) "Annular space" is the space between the surface or outer casing and the inner casing, or the space between the wall of the drilled hole and the casing.**

**((4) "Aquifer" is a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.**

**((5) "Artesian well" is a well tapping an aquifer bounded above and below by confining or impermeable rock or soil layers, or rock or soil layers of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells.**

**((6) "Artificial gravel pack" is a mixture of gravel or sand placed in the annular space around the liner, perforated pipe, or well screen. A gravel pack is used to reduce the movement of finer material into the well and provide lateral support to the screen in unstable formations.**

**((7) "Artificial recharge" is the addition of water to an aquifer by activities of man, such as irrigation or induced infiltration from streams, or injection through wells, trenches, pits, and ponds.**

**((8) "Bentonite" is a mixture of swelling clay minerals, predominantly sodium montmorillonite.**

**((9) "Capped well" is a well that is not in use and has a watertight seal or cap installed on top of the casing.**

((10)) "Casing" is a pipe, generally made of metal or plastic, which is installed in the bore hole to maintain the opening.

((11)) "Consolidated formation" means any geologic formation in which the earth materials have become firm and cohesive through natural rock forming processes. Such rocks commonly found in Washington include basalt, granite, sandstone, shale, conglomerate, and limestone. An uncased bore hole will normally remain open in these formations.

((12))) See other definitions under chapter 173-160 WAC.

(1) "Constructing a well" or "construct a well" means:  
 (a) Boring, digging, drilling, or excavating a well;  
 (b) Installing casing, sheeting, lining, or well screens, in a well; ((or))

(c) Drilling a geotechnical soil boring; or  
 (d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

((13)) "Contamination" has the meaning provided in RCW 90.48.020.

((14)) (2) "Continuing education provider" is any person, organization, school or other entity involved in education that has received approval from the department for their continuing education plan and curriculum.

(3) "Continuing education unit" is one credit approved by the department for time spent participating in training or instruction in subject areas approved by the department.

((15)) "Curbing" is a liner or pipe made of concrete, precast tile or steel installed in dug wells to provide a annular space between the well bore and the liner or pipe for sealing.

((16))) (4) "Decommissioning" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

((17))) (5) "Department" means the department of ecology.

((18))) (6) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a land slide, or protecting an aquifer.

((19))) (7) "Director" means director of the department of ecology.

((20)) "Disinfection" or "disinfecting" is the use of chlorine, or other disinfecting agent or process approved by the department, in sufficient concentration and contact time adequate to inactivate coliform or other indicator organisms.

((21))) (8) "Domestic water supply" is any water supply which serves a family residence(s).

((22)) "Draw down" is the measured difference between the static ground water level and the ground water level induced by pumping.

((23)) "Drilled well" is a well in which the hole is usually excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.

((24))) (9) "Driven well" is a well constructed by joining a "drive point" to a length of pipe, then driving the assembly into the ground.

((25))) (10) "Dug well" is a well generally excavated with hand tools or by mechanical methods. The side walls

may be supported by material other than standard weight steel casing.

((26)) "Filter pack" means clean, well rounded, smooth, uniform, sand or gravel, which is placed in the annulus of the well between the bore hole wall and the liner, perforated pipe, or well screen to prevent formation material from entering the well.

((27)) "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

((28)) "Geotechnical information" means subsurface engineering properties used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability.

((29))) (11) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(12) "Geotechnical soil boring" or "boring" means an uncased well drilled for the purpose of obtaining soil samples to ascertain structural properties of the subsurface. ((Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.

((30))) (13) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(14) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

((31)) "Grout" is a fluid mixture of cement, bentonite, and water used to seal the annular space around or between well casings, or to decommission wells.

((32)) "Impermeable" is a descriptive term for earth materials which have a texture or structure that does not permit fluids to perceptibly move into or through its pores or interstices.

((33))) (15) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(16) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes bore hole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

((34)) "Liner" means any device inserted into a larger casing, screen, or bore hole as a means of maintaining the structural integrity of the well.

((35)) "Lysimeter" means a well used to withdraw soil water or pore samples from subsurface soil or rock above the water table for chemical, physical, or biological testing.

((36)) (17) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevations in either clean or contaminated water or soil.

((37)) (18) "Nested well" means the installation of more than one cased resource protection well in one bore hole. This does not preclude casing reductions.

((38)) (18) "Observation well" means a well designed to measure the depth to the water or water level elevation in either clean or contaminated water or soil.

((39)) (19) "Operator" means a person who:

(a) Is employed by a well contractor;

(b) Is licensed under this chapter; or

(c) Who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

((40)) (20) "Permeability" is a measure of the ease of which liquids or gas move through a porous material.

(a) For water, this is usually expressed in units of centimeters per second or feet per day. Hydraulic conductivity is a term for water permeability.

(b) Soils and synthetic liners with a water permeability of  $1 \times 10^{-7}$  cm/sec or less may be considered impermeable.

((41)) (21) "Piezometer" means a well designed to measure water level elevation at a specific depth beneath the water table.

((42)) (22) "Pollution" has the meaning provided in RCW 90.48.020.

((43)) (23) "Pressure grouting" is a method of forcing grout into specific portions of a well for sealing purposes.

((44)) (24) "PTFE" means polytetrafluoroethylene casing materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.

((45)) (20) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

((21)) (25) "Public water supply" is any water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, available to the public for human consumption or domestic use, excluding water supplies serving one single-family residence and a system with four or fewer connections all of which serve residences on the same farm.

((46)) (26) "PVC" means polyvinyl chloride a type of thermoplastic casing.

((47)) (22) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

((48)) (23) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill

response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

((49)) (24) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

((50)) (25) "Spill response well" means a well used to capture or recover any spilled or leaked fluid which has the potential to, or has contaminated the ground water.

((51)) (26) "Static water level" is the vertical distance from the surface of the ground to the water level in a well when the water level is not affected by withdrawal of ground water.

((52)) (27) "Temporary surface casing" is a length of casing (at least four inches larger in diameter than the nominal size of the permanent casing) which is temporarily installed during well construction to maintain the annular space.

((53)) (26) "Structured properties" means subsurface engineering properties or geotechnical information used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability samples.

((54)) (27) "Test well" is a well (either cased or uncased), constructed to determine the quantity of water available for beneficial uses, identifying underlying rock formations (lithology), and to locate optimum zones to be screened or perforated. If a test well is constructed with the intent to withdraw water for beneficial use, it must be constructed in accordance with the minimum standards for water supply wells, otherwise they shall be constructed in accordance with the minimum standards for resources protection wells. A water right permit, preliminary permit, or temporary permit shall be obtained prior to constructing a test well unless the anticipated use of water is exempt as provided in RCW 90.44.050. A "test well" is a type of "water well."

((55)) (28) "Tremie tube" is a small diameter pipe used to place grout, filter pack material, or other well construction materials in a well.

((56)) (29) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

((57)) (28) "Uneconsolidated formation" means any naturally occurring, loosely cemented or poorly consolidated earth material including such materials as uncompact gravel, sand, silt and clay. Alluvium, soil, and overburden are terms frequently used to describe such formations.

((58)) (29) "Vapor extraction well" means a well used to withdraw gases or vapors from soil, rock, landfill, or ground water or allow air or vapor to enter subsurface soil or rock for the purpose of remediating soil and/or ground water contamination.

((59)) (29) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of ground water. Water well includes ground source heat pump borings and grounding wells.

((60)) (30) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or

other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

((60)) (31) "Well alterations" include(s), deepening, hydrofracturing or other operations intended to increase well yields or change the characteristics of the well. Well alterations does not include general maintenance, cleaning, sanitation, and pump replacement.

((61)) "Well completion" means that construction has progressed to a point at which the drilling equipment has been removed from the site, or a point at which the well can be put to its intended use.

((62)) (32) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW.

((63)) (33) "Well driller(s)" or "driller(s)" ((is synonymous with "operator(s).")

(64)) means a resource protection well contractor or operator and a water well contractor or operator.

(34) "Well" means water wells, resources protection wells, ((instrumentation wells;)) dewatering wells, and geo-technical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-055 What types of operator licenses are available?** ((Five)) Seven types of drilling licenses are available:

- (1) Water well operator training license.
- (2) Resource protection well operator training license.
- (3) Resource protection well operator license.
- (4) Water well operator license.

(5) Conditional licenses for water or resource protection well drilling.

(6) Retirement license for water and/or resource protection well drilling.

(7) Inactive license for water and/or resource protection well drilling.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-060 How do you qualify for each license?** (1) **Training licenses.**

(a) You are qualified to receive either a water or a resource protection training license if you:

(i) Submit a completed application to the department on forms provided by the department and pay the department a ((twenty-five)) seventy-five dollar application fee; and

(ii) Have completed at least six hundred hours of drilling experience working under the direct supervision of a licensed operator who has held a Washington state water and/or resource protection well drilling license for at least three years; and

(iii) Have obtained six continuing education units as approved by the department; and

(iv) Pass a written examination as provided for in RCW 18.104.080; and

(v) Pass an on-site examination by the department; and

(vi) Present a statement by a person or persons licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that:

(A) The applicant has acquired a minimum of six hundred hours of field experience required under this chapter; and

(B) The operator has assumed liability for any and all well construction activities of the applicant while the applicant was gaining his/her six hundred hours of field experience. The operator shall not be subject to any penalties or orders that may be issued for wells constructed by the applicant that were not the responsibility of the operator to have direct supervision and control over; and

(C) A licensed operator, except a trainee, who will sponsor the trainee, has been identified on the signed statement. The licensed operator who will be sponsoring the trainee, shall assume liability for any and all well construction activities of the trainee accomplished under the operator's control during the period of the trainee's license; and

(vii) In obtaining a statement from a well operator(s) under (a)(vi) of this subsection, an applicant who has gained drilling experience under more than one operator shall submit a statement from each operator. It is not necessary to accumulate all qualifying experience under one operator. Field experience for which a statement of verification and liability cannot be obtained, shall not be used as qualifying experience under this section.

All statements shall be entered on forms provided by the department.

**(b) Terms and conditions of a training license.**

(i) A person with either a resource protection or a water well training license may construct only those types of wells for which they are licensed without being under the direct supervision of a licensed operator provided:

(A) A licensed operator is available by radio, telephone, or other means of communication; and

(B) The licensed operator can reach the drill site within one hour.

(ii) A trainee shall maintain a daily drilling log identifying all work accomplished that day. The log shall remain in the possession of the trainee at all times and shall be reviewed and initialed daily by the responsible licensed operator. The drilling log shall be available for review by department and county officials whose county has received delegated authority as provided in RCW 18.104.043.

(iii) The work documented and initialed in the drilling log ((may)) shall be used in your application for a license under the training program completed, licensing category of this chapter.

(iv) All verifiable work performed by a trainee under the control of a licensed operator may be carried over to subsequent operator(s) who assume liability for the trainee.

(v) A trainee may apply and qualify for ((only one type of)) both a resource protection ((or)) and a water well drilling((of)) training license ((at a time)), provided they meet the provisions of WAC 173-162-060 (1)(a) for each license they apply for.

**(2) Water well or resource protection well operator licenses.**

A person shall be qualified to receive either a water or resource protection well operator license if you meet the requirements of one of the following categories:

**(a) New applicant category.**

((A)) **Applicants who have never held a well operator license ((and whose qualifying drilling experience was started after the effective date of this regulation)) qualify if they:**

((A)) (i) Submit a completed application to the department on forms provided by the department and pay the department a ((twenty-five)) seventy-five dollar application fee; and

((B)) (ii) Submit proof that they have acquired five thousand four hundred hours of drilling experience under the direct supervision of a licensed well operator. Experience gained as a licensed trainee may be applied towards the experience requirements of this subsection; and

((C)) (iii) Submit proof that they have obtained thirty-two continuing education units; and

((D)) (iv) Pass a written examination as provided for in RCW 18.104.080.

(v) The department shall evaluate and approve all qualifying experience and educational training. If your qualifying drilling experience under (a)((i)(B)) (ii) of this subsection is from another state, the department may require an on-site examination.

((ii)) **Applicants who have never held a well operator license and who have obtained at least twelve months of qualifying drilling experience before the effective date of this regulation qualify to receive a license if they:**

(A) Submit a complete application to the department; and

(B) Pay a twenty-five dollar fee; and

(C) Pass a written exam; and

(D) Show proof that they have completed a total of twenty-four months of drilling experience under a licensed operator. Your proof must show that you started working towards a drilling license prior to the effective date of this regulation, and that you have been diligently and continuously working towards obtaining a drilling license since you started. Proof shall consist of tax records, pay statements, or other documentation showing that you were under the supervision of a licensed operator.

(E) **The department shall evaluate and approve all qualifying drilling experience. If your drilling experience under (a)(ii)(D) of this subsection is from another state, the department may require an on-site examination.**

(iii) Individuals who have been working towards obtaining a drilling license but have acquired less than twelve months of qualifying drilling experience prior to the effective date of this chapter, may apply their education and experience towards the requirements of a training license.)

**(b) Training program completed category.**

Applicants who have held a valid training license will be qualified to receive an operator license if they:

(i) Submit a completed application to the department on forms provided by the department and pay the department a ((twenty-five)) seventy-five dollar application fee; and

(ii) Submit proof that they have worked as a licensed trainee under the provisions of this chapter for at least three thousand six hundred hours; and

(iii) Have obtained fourteen continuing education units while working under the training program.

**(c) Licensed experience category.**

**(i) Applicants who have never held an operator license in Washington state qualify if they:**

(A) Submit a completed application to the department on forms provided by the department and pay the department a ((twenty-five)) seventy-five dollar application fee; and

(B) Hold a valid well operator license, or equivalent, in another state and can show proof that the license has been held for a period of at least three years. The department shall evaluate and approve all experience acquired by out-of-state licensed operators; and

(C) Have obtained thirty-two continuing ((educational)) education units as approved by the department; and

(D) Pass a written examination as provided for in RCW 18.104.080; and

(E) Passed an on-site examination by the department. The on-site examination may be waived by the department.

(F) Proof of licensing under (c)(i)(B) of this subsection shall be submitted with the application for license. Proof of drilling experience may include drilling logs, federal or state tax records; employment records; or other records acceptable to the department.

**((ii)) Individuals, other than trainees, whose Washington operator license has been suspended, revoked, expired or whose license status has ((expired)) changed to retired or inactive may apply for a new license. These individuals qualify to receive a license if:**

(A) The terms of the order of suspension or revocation have been met; and

(B) They submit a completed application to the department on forms provided by the department and pay the department a ((twenty-five)) seventy-five dollar application fee; and

(C) They have obtained seven continuing ((educational)) education units for each year or portion of a year the license has been revoked, suspended, inactive, retired, or expired; and

(D) They pass a written examination as provided for in RCW 18.104.080; and

(E) They pass an on-site examination by the department.

(F) The written and/or on-site examination(s) under (c)(ii)(D) and (E) of this subsection may be waived by the department.

(3) Individuals who received an operator license for either water well or resource protection well drilling ((after the effective date of these regulations)) are qualified to receive the other license if they:

(a) Currently hold a valid well operator license under one of the categories in subsection (2) of this section((—The license must have been issued by the department after the effective date of these regulations)); and

(b) Submit a completed application to the department on forms provided by the department and pay a ((twenty-five)) seventy-five dollar application fee; and

(c) Pass a written examination; and

(d) Pass an on-site examination if their field experience was gained in another state. The department may waive the on-site examination.

(e) Submit proof of at least six hundred hours of additional well drilling experience for the other type of license you wish to obtain. **EXAMPLE** - You currently hold a water well operator license that was issued by the department after the effective date of these regulations. You also wish to be licensed to construct resource protection wells. You will qualify to receive the resource protection operator license by making an application, paying the fee, and showing proof of six hundred hours of resource protection well drilling experience, passing a written exam, and passing an on-site exam if your drilling experience was gained in another state. Proof of experience will consist of drilling reports showing you were the operator of record on at least fifteen resource protection wells, or other documentation showing experience approved by the department.

**(4) Conditional license.**

(a) A conditional license may be issued to a former licensed operator for the sole purpose of authorizing the well operator to comply with an order to correct a problem with a well. The terms of the license shall detail the extent and limitations placed on the well operator. This may include limitations of work to be completed on a specific well, license expiration, and any other limitation set by the department.

(b) A conditional license cannot be issued to a person who has never held an operator license issued under the provisions of this chapter.

**(5) Retirement license.**

(a) A person shall be qualified to receive a retirement license if you meet the following requirements:

(i) Submit a completed application to the department on forms provided by the department and pay the department a seventy-five dollar application fee; and

(ii) Hold a current active license for a minimum of ten years; and

(iii) Have no outstanding enforcement actions.

(b) The holder of a retirement license may not engage in any licensed activities. The holder of a retirement license may apply for a new license under WAC 173-162-060(2).

**(6) Inactive license.**

(a) A person shall be qualified to receive an inactive license if you meet the following requirements:

(i) Submit a completed application to the department on forms provided by the department and pay the department a seventy-five dollar application fee; and

(ii) Show proof of inactive status based on military documents, hospitalization records, out of country drilling or other extraordinary circumstances as determined by the department; and

(iii) Hold a current active license; and

(iv) Have no outstanding enforcement actions.

(b) Extraordinary circumstances do not include failure to notify the department of a change of address; postal service error and domestic disputes (divorce or separation).

(c) The holder of an inactive license must resubmit an application to extend inactive license status at the end of each two-year period. The holder of an inactive license may not engage in any licensed activities. The holder of an inactive

license may apply for a new license under WAC 173-162-060(2).

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-070 What application fees are required?** Application fees are ((twenty-five)) seventy-five dollars for each operator or training license.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-075 How often do I need to renew my license?** (1) Licenses issued under this chapter, except a training license, shall be renewed every two years.

(2) A training license shall be valid for a period of two years from the time it was originally issued. A training license cannot be renewed. However, a one-time extension may be granted upon show of good cause by the trainee. The limit of the extension shall be for no longer than twenty-four months ((and)). The trainee will be required to earn seven continuing education units for each year or portion of a year the license is held. The department may waive the continuing education requirement of this subsection. Each request will be evaluated on a case-by-case basis. A ((twenty-five)) seventy-five dollar fee will be charged for the extension.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-080 What are the conditions and cost of renewing a drilling license?** (1) Between the 1993 legislation, Laws of 1997, chapter 387, and the adoption of these regulations implementing the legislation, the well operator licenses issued and renewed by the department met the requirements of the 1993 legislation and may be renewed for either a water well or resource protection well operator license or both as provided in subsection (2) of this section.

(2) A holder of a valid license may renew the license if they:

(a) Submit a completed application on forms ((provided)) approved by the department; and

((Except as provided in subsection (3) of this section,)) Show proof that they successfully completed fourteen continuing education units during the past twenty-four months of the license term. A minimum of two continuing education units out of the fourteen required units must be about Washington state drilling or licensing regulations; and

(c) Pay a ((twenty)) seventy-five dollar renewal fee for each license they wish to renew.

((If you currently hold a valid operator license that was issued prior to the effective date of this regulation, you may renew that license and receive a water well operator license and/or a resource protection well operator license without meeting the requirements for continuing education until you apply for license renewal in the year 2000.

((4))) If you fail to submit a completed application for renewal, the license shall expire at the end of its effective term. A complete application includes the submission of the

renewal fee and proof of completion of the required continuing education.

((5)) (4) If your license has expired, you will have thirty days in which to renew it. The thirty-day extension period is to be used only to submit a late application and fee. It is not to be used to gain continuing education units. You must not engage in any licensed activities during this time. If you fail to submit your renewal application, fee, and proof of continuing education after the extension period has expired, you must apply for a new license as provided in this chapter.

((6)) (5) The department may refuse to renew a license if the license is currently suspended or revoked, or the licensee has not complied with an order issued by the department or has not paid a penalty imposed under RCW 18.104.155, unless the order or penalty is under appeal.

((7)) (6) Operators shall not construct or decommission a well after their license has expired.

#### AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-085 Continuing education.** Ecology, with the assistance of the technical advisory group created in RCW 18.104.190, shall develop and administer a program for continuing education for the purpose of ensuring continued professional growth and competency of licensed operators.

##### ((1)) What is continuing education?

Continuing education is your opportunity to gain additional knowledge into subjects that directly relate to the drilling profession. It is designed to enhance your drilling skills, keep you informed on technological advances, and keep you informed on current state and local regulations. The ultimate goal is to ensure the highest quality of professional drilling. Continuing education is required of every person applying for an operator license and for every driller renewing an operator license.

##### ((2)) How do I obtain the required continuing education credit?

(a) Continuing education may be obtained from a number of sources. The department as well as other state and local agencies may provide continuing education classes. Additionally, private organizations or individuals may also present approved classes for credit.

(b) The primary ways to receive credits will be:

(i) Attend and/or successfully complete classes, courses, workshops, or seminars that have been preapproved for credit; and/or

(ii) Have the class, course, workshop, or seminar you plan on attending or have attended evaluated by the technical advisory group and approved by the department for credit; and/or

(iii) Completion of correspondence courses will be considered and evaluated on a case-by-case basis.

##### ((3)) How will credit be assigned?

(a) The technical advisory group shall evaluate all courses, classes, workshops, or seminars and recommend assignment of continuing education credits. Their evaluation shall be reviewed by the department for approval.

(b) The following criteria shall be utilized to evaluate and assign credit:

(i) Course agenda and how well the subject relates to the business, technical, and/or regulatory aspects of well drilling and to the knowledge, skills, and abilities required in the well drilling profession.

(ii) Subject(s) difficulty.

(iii) Instructor qualifications.

(iv) Student course evaluations may be utilized to assign credit to courses.

(c) Course sponsors may have their courses preapproved by submitting a request to the department on forms provided by the department.

(d) Individuals planning on attending or who have attended classes, courses, workshops, or seminars that were not preapproved for credit must request a course evaluation and credit approval through the department on forms provided by the department.

(e) All courses, classes, workshops, or seminars must be open to anyone who wants to attend. This does not preclude a provider from imposing reasonable requirements for attendees such as fees and providing their own safety equipment.

##### ((4)) What types of general topics, workshops or seminars will be accepted?

(a) General subject areas include: Occupational health and safety; business and office skills; interpersonal skills; technical aspects associated with drilling; and other subject areas approved by the department.

(b) Workshops, seminars, classes, or courses conducted by professional associations, governmental agencies, private businesses, and individuals, may be accepted, provided the subject(s) meets the provisions of this chapter.

##### ((5)) How do I get credit for participating in a continuing education program?

(a) A person is qualified to receive continuing education credit upon showing proof of attendance at an approved class, course, workshop, or seminar.

(b) Proof includes: Certificates of completion; transcripts; attendance rosters; diplomas; or other documents approved by the department.

##### ((6)) General information on continuing education:

(a) Credits received during a renewal period that are in excess of the requirements cannot be used for any succeeding years. EXAMPLE: A driller earning 20 continuing educational credits during their two year renewal period cannot apply the six credits towards a future renewal.

(b) Credits shall not be assigned to courses, workshops, classes, or seminars attended prior to July 1, 1993.

(c) It is the operator's/trainee's responsibility to track and maintain records of their continuing education credits.

(d) Continuing education units will **not be required to renew** an operator license prior to January 1, 2000.

(e) A person licensed for both water well and a resource protection well construction need only obtain fourteen continuing educational units per renewal period.

(f) A person applying to receive both a water well and resource protection well operator license need only meet the continuing education unit requirements for one license.) (1) What is continuing education? Continuing education is your opportunity to gain additional knowledge into subjects that directly relate to the well drilling profession. It is designed to enhance your knowledge, drilling skills, and keep you

informed on technological advances, as well as keeping you informed on current state and local regulations. The ultimate goal is to ensure the highest quality of professionalism in the well drilling industry. Continuing education is required of every person applying for an operator's license and for every licensed operator renewing their license. Continuing education units (CEUs) are earned by attending continuing education programs. Continuing education programs consist of approved training, classes, courses, workshops, offerings, correspondence instructions, or other means of providing instruction.

(2) How do I obtain required continuing education units?

(a) Except as provided for in this chapter, continuing education units will only be obtained from an approved continuing education provider (a continuing education provider is: Any person, organization, school or other entity involved in education and have received approval from the department for their continuing education plan and curriculum).

(b) The department shall maintain a current list of all continuing education providers and programs. This list will be available on the department's web page and/or by request.

(c) In order to receive continuing education units you must successfully complete continuing education programs. You must be present throughout the entire instructional period in order to be eligible to receive full credit.

(3) How do I become an approved continuing education provider? Persons, organizations, schools, and other entities that provide training and education must submit a continuing education plan to the department for approval. Upon approval of the plan, the requestor becomes an approved continuing education provider. The department may waive the requirement to have a continuing education plan for colleges, universities, or other entities that have an accreditation requirement of their own.

(a) What are the required elements of a continuing education plan? A continuing education plan must contain the following required elements:

(i) Contact information. Name of the person, organizations, schools, and other entities applying to become an approved continuing education provider. Their mailing address, telephone number(s), and e-mail address. Names of a contact person(s), their mailing address, telephone number(s), and e-mail address.

(ii) Statement of qualifications. A statement of qualifications consists of a summary of the provider's experience in providing education programs; references; and lists of any licenses they hold and/or membership in any professional organizations.

(iii) Statement of resources. A statement of resources shall identify the location(s) of the continuing education program and the number of individuals required to put on the program.

(iv) Statement of organization. A statement of organization consists of a summary of how the courses will be advertised; number and frequency of classes offered during the year; a description of the method to be used to evaluate courses; a description of how attendance will be verified and reported to the department; a description of the type of proof of completion to be awarded to each student; and a cancellation policy.

(v) Statement of accountability. The statement of accountability shall justify the cost of the class and include a statement assuring delivery of courses by the provider.

(b) As provided for in this chapter, the department in consultation with the technical advisory group created in RCW 18.104.190 may waive the requirement for a provider to have a continuing education plan consistent with the goals of this WAC.

(4) How do I get credit for participating in a continuing education program and report units to the department?

(a) A person is qualified to receive continuing education units after the program has been evaluated and upon showing proof of attendance and completion of an approved continuing education program. Each continuing education provider is required to provide their students with documentation, approved by the department, showing successful completion of the program.

(b) All operators/trainees must report their continuing education units to the department prior to their license renewal date.

(c) The department will keep a record of the licensees' continuing education units as they are submitted. You may access your record through the department's web site or request a copy of your record.

(d) It is the individual's responsibility to track and maintain records of their continuing education units.

(5) General information on continuing education:

(a) Continuing education units received during a renewal period that are in excess of the requirements cannot be used for any succeeding years.

Example: A driller earning twenty continuing education units during their two-year renewal period cannot apply the six extra units towards any future renewal.

(b) New applicants may have continuing education units assigned for courses, workshops, classes, or seminars attended no more than five years prior to their application date.

(c) An individual licensed for both water well and resource protection well construction need only obtain fourteen continuing education units per renewal period.

(d) An individual applying for a new license for both a water well and resource protection well operator's license need only meet the continuing education unit requirements for one license.

(e) For new applicants or currently licensed individuals, two continuing education units must cover Washington state department of ecology laws and regulations provided by the department or their designee. This section will take effect one year from the effective date of this rule.

(6) What topics will be approved for continuing education programs? General topics include: Occupational health and safety; business and office skills; interpersonal skills; technical aspects associated with well design, construction, development, maintenance, and testing; geology and ground water sciences, safety, welding, HAZMAT training, first aid; and other topics relating directly to well construction and the ground water industry as approved by the department. The department may also request approved continuing education providers to cover certain topics in their continuing education

plan based on trends or observations from department compliance officers.

(7) How will continuing education units be assigned?

(a) The following criteria shall be utilized when evaluating programs and assigning continuing education units.

(i) The subjects' relevance to the business, technical, and/or regulatory aspects of well drilling;

(ii) How well the subject will enhance the knowledge, skills, and abilities required in the well drilling profession;

(iii) Length of program; and

(iv) Final group selection.

The program syllabus must be reviewed in order to address these criteria.

(b) A program syllabus shall contain the following:

(i) Course title.

(ii) Instructor name(s).

(iii) Instructor qualifications.

(iv) Course length.

(v) Course outline, detailing specific subject material to be taught and testing schedule.

(vi) A statement regarding how the course pertains to the business, technical, regulatory, and safety aspects of well construction.

(vii) A statement regarding the goals and objectives of each class.

(viii) A statement that the class will be open to all who desire to attend.

(ix) Admission cost.

(x) A description of textbooks, supplemental readings, or materials such as safety equipment, calculators, or other items the attendee will need to provide.

(xi) The date and time of the course and driving directions.

(c) Based on the syllabus review, each continuing education program will be categorized into one of seven groups:

(i) Group one - Subjects that directly relate to the business, technical, regulatory, and safety aspects of well construction; and subjects that enhance ground water protection and increased professionalism within the drilling community.

(A) Washington well construction and licensing statutes and regulations.

(B) Construction methodology, well design, development, maintenance, and testing.

(C) Protection of the ground water resource.

(D) Hydrogeology and ground water science.

(E) Equipment operation and maintenance.

(F) Computer skills.

(G) Welding.

(H) Business management and office skills.

(I) Interpersonal skills.

(J) Occupational health and safety.

(K) Map reading skills.

(L) Local and state health regulations.

(M) DOT regulations.

(ii) Group two - Subjects that will improve the industries' knowledge and understanding of subjects related to ground water.

(iii) Group three - Subjects not covered under group one or two, but benefit the driller in their professional development.

(A) Vendor specific product/sales courses.

(B) Pumps.

(iv) Group four - Miscellaneous courses.

(A) College courses.

(B) Correspondence courses.

(C) Trade school courses that do not fall into another group.

(v) Group five - Attending conventions (trade show).

(A) Washington Ground Water Association.

(B) National Ground Water Association.

(C) Pacific Northwest Expo.

(D) Other state recognized conventions.

(vi) Group six - Preapproved classes.

(A) OSHA HAZWOPPER 40 hour basic course - 20 credits.

(B) OSHA HAZWOPPER 8 hour refresher - 4 credits.

(C) Red Cross 8 hour first aid/CPR - 4 credits.

(D) Others as approved by the department.

(vii) Group seven - Programs for which no credits are assigned.

(d) A program will be assigned continuing education unit(s) based on the group that best describes the training session and the published length of the training session.

The following is a unit value for each group:

Group one - One unit per hour.

Group two - One-half unit per hour.

Group three - One-quarter unit per hour.

Group four - Unit value equal to the education credit, not to exceed four continuing education units per license renewal period or trainee applicant. No more than eight for all other applicants.

Group five - One unit per convention.

Group six - As listed.

Group seven - No unit value.

(e) Operators/trainees who have attended continuing education programs that were not previously approved may receive continuing education units by providing an application to become a provider and class syllabus form to the department.

(f) Individuals may receive continuing education units for preparing and presenting classes as follows:

(i) No continuing education units will be assigned for class preparation/presentation to nondrilling audiences.

(ii) One continuing education unit per hour of presentation and one CEU per hour of preparation time. Continuing education units allowed for preparation time are limited to no more than twice the time it took to present the course. Example - one hour class, no more than two hours preparation time allowed. Total three CEUs.

(g) All continuing education programs must be open to anyone who wants to attend. This requirement does not preclude a provider from imposing reasonable requirements for attendees such as, but not limited to, fees, space limitations and providing their own safety equipment.

(8) What is the department's role in providing continuing education?

(a) The department shall approve all continuing education programs and assign continuing education units required by this chapter. The technical advisory group shall assist the department in their evaluation by reviewing continuing edu-

cation programs and recommending assignment of continuing education units on classes referred to them by the department.

(b) The department will provide technical support including those meeting the requirements in subsection (5)(e) of this section, in the form of speakers and materials for use in continuing education programs to approved continuing education providers upon request and at their sole discretion.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-162-095 What should I know about the written and on-site examinations?** The written and on-site examinations for licenses issued under this chapter are prepared, administered, and evaluated by the department.

**(1) What subjects will the written exam cover?** The examinations are prepared to test the knowledge and understanding of the following subjects:

(a) Washington state ground water laws as they relate to constructing and decommissioning wells;

(b) Sanitary standards for constructing wells;

(c) Types of well construction and decommissioning;

(d) Drilling techniques, tools and equipment;

(e) Geology (including soil and rock description) as it relates to well construction;

(f) Rules and regulations of the department relating to constructing a well, test pumping, and equipment maintenance;

(g) Preparation of intent forms, well reports, and requests for variances;

(h) Township and range location system as it relates to location of wells;

(i) Basic ground water hydraulics as it relates to well construction and protection of the resource; and

(j) Rules and regulations of the Washington state department of health relating to source approval and source protection of public drinking water systems.

**(2) What subjects will the on-site test cover?**

The on-site examination shall test the applicant's field skills and knowledge in the following areas:

(a) Safety.

(b) General knowledge of equipment operation.

(c) Equipment maintenance.

(d) Drilling knowledge.

(e) Well development.

(f) Implementation of the construction standards under chapter 173-160 WAC.

**(3) When and where are the written examinations given?**

(a) Examinations will be held at such a time and place as may be determined by the department, but not later than thirty days after the department accepts the completed application package consisting of:

(i) A completed application form with appropriate fee; and

(ii) Proof of required continuing education; and

(iii) Proof of required drilling experience.

(b) Upon receipt of a completed application package, the department shall notify you of the date, time and place of the

next scheduled written examination. You shall notify the department at least twenty-four hours prior to your scheduled exam date if you cannot meet the examination schedule. Your notice shall include the reason(s) why you cannot meet the schedule. If you fail to notify the department, or fail to reschedule your exam within thirty days of your initial exam date, you will forfeit your application and fee. You must submit a new application and fee in accordance with WAC 173-162-060 if you wish to take the exam.

(c) If your application package is received after an examination has been scheduled and there is either insufficient time for the department to notify you of the time and place of the examination or you are unable to take the examination at the scheduled time, the thirty-day period will start from the scheduled examination date.

**(4) When and where are the on-site examinations given?**

(a) You must pass the written exam before you can take the on-site exam.

(b) If you are required to take an on-site examination you will receive an authorization form along with the confirmation of your written test results.

(c) ((Following the receipt of your test results, you will be responsible to select an authorized on-site advisor. The advisor will assist you and the department with coordinating the on-site examination. A list of the on-site advisors will be included with your test results.)

((d))) You((, the advisor)) and the department will schedule a mutually agreed upon time and place for the on-site exam. RCW 18.104.080 requires that examinations be held within thirty days after a completed application is filed with the department. ((If this is not practical, you must notify the department and request an extension to the testing schedule. Your request shall include:

(i) The reason(s) why you cannot meet the schedule.

((ii) Acceptable reasons for rescheduling exams may include: Weather, availability of advisors or department staff, or health problems.

((e))) Failure to complete the on-site exam within ninety days may result in having to reapply and reschedule another on-site exam.

((f))) (d) You ((and the on-site advisor will)) shall arrange for all the equipment, materials, and location for the on-site examination.

((g))) (e) The department must be present during the on-site examination.

**(5) When will I be notified of the results of my written and on-site examination?**

The department shall notify you of your test results within ten days after each examination.

**(6) If I fail an exam, may I take a retest?**

(a) If you fail the written or on-site exam, you shall not be entitled to take the examination, or any parts of the examination for a period of thirty days from the date of your original examination.

(b) If you failed to pass the written exam, you are considered a new applicant in all respects.

(c) If you fail the on-site exam, you will be required to arrange a retest after a thirty-day waiting period. You will not be required to retake the written exam.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 173-162-140

What are the requirements to become an on-site testing advisor?

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-010 What is the purpose of this regulation?** (1) These regulations are adopted under chapter 18.104 RCW, to establish minimum standards for the construction and decommissioning of all wells in the state of Washington.

(2) The following are excluded from these regulations:

(a) Any excavation that is not intended to locate, divert, artificially recharge, observe, monitor, dewater, or withdraw ground water ((for agricultural, municipal, industrial, domestic, or commercial use)) except resource protection wells, ground source heat pump borings, grounding wells, and geotechnical soil borings.

(b) Any excavation for the purpose of obtaining or prospecting for oil, natural gas, minerals, products of mining, quarrying, inserting media to repressure oil or natural gas bearing formations, storing petroleum, natural gas, or other products, as provided in chapter 78.52 RCW.

(c) Injection wells regulated in chapter 173-218 WAC.

Exception: Injection wells used to withdraw ground water and remediation wells that are used to inject any substance to remediate, clean up, or control potential or actual contamination may be regulated by chapters 173-218 and 173-160 WAC.

(d) Infiltration or exfiltration galleries, trenches, ponds, pits, and sumps, except where the department determines that the intended use of the excavation meets a definition in RCW 18.104.020.

(e) Grounding wells and grounding rods that are installed to a depth of twenty-five feet or less.

(3) Under chapter 90.48 RCW, those excavations excluded in subsection (2)(a) through (d) of this section shall be constructed, maintained, and decommissioned to ensure protection of the ground water resource and to prevent the contamination and waste of that resource.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-040 How does this regulation relate to other authorities?** (1) Nothing in these regulations may be construed to waive any legal requirements of other state agencies or local governmental entities relating to well construction, nor may it preclude the adoption of more stringent minimum well construction standards by local government.

(2) Well contractors shall be familiar with all state and local well construction requirements, and existing and approved site plans, to include septic permits, for their job sites prior to initiating construction. Drillers working in

counties that have delegated authority to inspect wells shall check with the county environmental health section for inspection requirements. Drillers are required to obey all county notification and reporting requirements.

**NEW SECTION**

**WAC 173-160-073 How will the delegated authorities be evaluated?** The department will, on an annual basis, review each of the local health jurisdictions or counties, inter-agency agreements. The review shall include an audit of the construction inspections, decommissioning inspections, enforcement activities, variance decisions, training needs, technical assistance, coordination with drillers and other driller interactions that occurred during the year. The review will also address the need to update or otherwise change portions of the delegation agreements.

The department will summarize the reviews into an annual report. The report will be completed no later than April 1 of each year. The completed report will be available to the public upon request and posted on the department's web site.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-101 What are the general standards that apply to all water wells?** The following minimum standards apply to all water wells constructed and decommissioned in the state of Washington. It is the responsibility and liability of the water well operator who constructs the well, the property owner, and the water well contractor, to take whatever measures are necessary to guard against waste and contamination of the ground water resources.

(1) It is necessary in some cases to construct and decommission wells with additional requirements beyond the minimum standards. Additional requirements may be necessary when the well is constructed or decommissioned ((in, or)) adjacent to a known, or potential source of contamination. Examples of sources, or potential sources of contamination are found in the well siting section, WAC 173-160-171.

(2) Nothing in these regulations limits the department's authority to approve comparable alternative specifications for well construction as technology in the industry develops, or new and comparable methods of construction become known to the department.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-106 How do I apply for a variance on a water well?** (1) When strict compliance with the requirements and standards of this chapter are impractical, any person may request a variance to the department from a regulation or regulations. The application for variance must propose a comparable alternative specification that will provide equal or greater human health and resource protection than the minimum standards. Application for a variance shall be made in writing and approved prior to the construction or decommissioning of the well.

(2) The variance application shall contain at least the following information:

- (a) Name, address, and phone number of the person requesting the variance;
- (b) Address of well site;
- (c) 1/4, 1/4, section, township, range;
- (d) The specific regulation(s) that cannot be followed;
- (e) The comparable alternative specification;
- (f) Justification for the request.

(3) At the department's discretion, the proponent may be required to provide additional technical information justifying the variance.

(4) The variance application will be evaluated, and a response will be given within fourteen days. In a public health emergency or other exceptional circumstance, verbal notification for a variance may be given. An emergency usually consists of a well failure resulting in a dry well or an unusable well. Driller convenience does not constitute an emergency.

((4)) (5) The emergency variance recipient must immediately follow up with a written notification to the department so that a permanent record is made of the variance.

((5)) (6) Local health districts or counties with delegated authority may grant variances under the provision chapter 18.104 delegated authority.

**AMENDATORY SECTION** (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

**WAC 173-160-111 What are the definitions of specific words as used in this chapter?** (1) "Abandoned well" means a well that is ((unused,)) unmaintained((, and)) or is in such disrepair ((as to be)) that it is unusable or is a risk to public health and welfare.

(2) "Access port" is a 1/2- to 2-inch tapped hole or tube equipped with a screw cap, which provides access to the inner casing, for measurement of the depth to water surface. An access port also means a removable cap.

(3) "Annular space" is the space between the surface or outer casing and the inner casing, or the space between the wall of the drilled hole and the casing.

(4) "Aquifer" is a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(5) "Artesian well" is a well tapping an aquifer bounded above and below by confining or impermeable rock or soil layers, or rock or soil layers of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells.

(6) "Artificial gravel pack" is a mixture of gravel or sand placed in the annular space around the liner, perforated pipe, or well screen. A gravel pack is used to reduce the movement of finer material into the well and provide lateral support to the screen in unstable formations.

(7) "Artificial recharge" is the addition of water to an aquifer by activities of man, such as irrigation or induced infiltration from streams, or injection through wells, trenches, pits, and ponds.

(8) "Bentonite" is a mixture of swelling clay minerals, predominantly sodium montmorillonite.

(9) "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

(10) "Building sewer" means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.

(11) "Capped well" is a well that is not in use and has a watertight seal or cap installed on top of the casing.

((10)) (12) "Casing" is a pipe, generally made of metal or plastic, which is installed in the bore hole as part of the drilling process to maintain the opening. Casing may be utilized in either consolidated or unconsolidated formations and must meet the requirements of WAC 173-160-201.

((11)) (13) "Consolidated formation" means any geologic formation in which the earth materials have become firm and cohesive through natural rock forming processes. Such rocks commonly found in Washington include basalt, granite, sandstone, shale, conglomerate, and limestone. An uncased bore hole will normally remain open in these formations.

((12)) (14) "Constructing a well" or "construct a well" means:

- (a) Boring, digging, drilling, or excavating a well;
- (b) Installing casing, sheeting, lining, or well screens, in a well; ((or))
- (c) Drilling a geotechnical soil boring; or
- (d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

((13)) (15) "Contamination" has the meaning provided in RCW 90.48.020.

((14)) (16) "Curbing" is a liner or pipe made of concrete, precast tile or steel installed in dug wells to provide an annular space between the well bore and the liner or pipe for sealing.

((15)) (17) "Decommissioning" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifer(s).

((16)) (18) "Department" means the department of ecology.

((17)) (19) "Design pumping rate" means the maximum pumping rate as determined by the well driller, without exceeding the department's policy on sand and turbidity.

(20) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a land slide, or protecting an aquifer.

((18)) (21) "Director" means director of the department of ecology.

((19)) (22) "Disinfection" or "disinfecting" is the use of chlorine, or other disinfecting agent or process approved by the department, in sufficient concentration and contact time adequate to inactivate coliform or other indicator organisms.

((20)) (23) "Domestic water supply" is any water supply which serves a family residence(s).

((21)) (24) "Draw down" is the measured difference between the static ground water level and the ground water level induced by pumping.

((22)) (25) "Drilled well" is a well in which the hole is usually excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.

((23)) (26) "Drilling log" means a water or resource protection well report.

(27) "Driven well" is a well constructed by joining a "drive point" to a length of pipe, then driving the assembly into the ground.

((24)) (28) "Dug well" is a well generally excavated with hand tools or by mechanical methods. The side walls may be supported by material other than standard weight steel casing.

((25)) (29) "Filter pack" means clean, well rounded, smooth, uniform, sand or gravel, which is placed in the annulus of the well between the bore hole wall and the liner, perforated pipe, or well screen to prevent formation material from entering the well.

((26)) (30) "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

((27)) (31) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(32) "Ground water" means and includes ground waters as defined in RCW ((90.40.035)) 90.44.035.

((28)) (33) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(34) "Grout" is a fluid mixture of cement, bentonite, and water used to seal the annular space around or between well casings, or to decommission wells.

((29)) (35) "Impermeable" is a descriptive term for earth materials which have a texture or structure that does not permit fluids to perceptibly move into or through its pores or interstices.

((30)) (36) "Liner" means ((any device)) a pipe inserted into a larger casing, ((screen,)) or bore hole, after the drilling process has occurred, as a means of maintaining the structural integrity of the well. Liners may only be used in consolidated formations and must meet the requirements of WAC 173-160-201.

((31)) (37) "Maximum pumping rate" means the maximum pumping rate, as determined by the well driller, without exceeding the department's policy on sand and turbidity.

(38) "Operator" means a person who:

(a) Is employed by a well contractor;

(b) Is licensed under this chapter; or

(c) Who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(39) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property

on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(40) "Permeability" is a measure of the ease of which liquids or gas move through a porous material.

(a) For water, this is usually expressed in units of centimeters per second or feet per day. Hydraulic conductivity is a term for water permeability.

(b) Soils and synthetic liners with a water permeability of  $1 \times 10^{-7}$  cm/sec or less may be considered impermeable.

((32)) (41) "Pollution" has the meaning provided in RCW 90.48.020.

((33)) (42) "Pressure grouting" is a method of forcing grout into specific portions of a well for sealing purposes.

((34)) (43) "PTFE" means polytetrafluoroethylene casting materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.

((35)) (44) "Public water supply" is any water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, available to the public for human consumption or domestic use, excluding water supplies serving one single-family residence and a system with four or fewer connections, all of which serve residences on the same farm.

((36)) (45) "PVC" means polyvinyl chloride, a type of thermoplastic casing or liner.

((37)) (46) "Static water level" is the vertical distance from the surface of the ground to the water level in a well when the water level is not affected by withdrawal of ground water.

((38)) (47) "Temporary surface casing" is a length of casing (at least four inches larger in diameter than the nominal size of the permanent casing) which is temporarily installed during well construction to maintain ((the)) an annular space for later placement of the surface seal as described in WAC 173-160-275, 173-160-285, 173-160-305, and 173-160-315. The temporary surface casing shall be removed before well completion.

((39)) (48) "Test well" is a well (either cased or uncased), constructed to determine the quantity of water available for beneficial uses, identifying underlying rock formations (lithology), and to locate optimum zones to be screened or perforated. If a test well is constructed with the intent to withdraw water for beneficial use, it must be constructed in accordance with the minimum standards for water supply wells, otherwise they shall be constructed in accordance with the minimum standards for resource protection wells. A water right permit, preliminary permit, or temporary permit shall be obtained prior to constructing a test well unless the anticipated use of water is exempt as provided in RCW 90.44.050. A "test well" is a type of "water well."

((40)) (49) "Tremie tube" is a small diameter pipe used to place grout, filter pack material, or other well construction materials in a well.

((41)) (50) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

((42)) (51) "Unconsolidated formation" means any naturally occurring, loosely cemented, or poorly consolidated earth material including such materials as uncompacted gravel, sand, silt and clay.

Alluvium, soil, and overburden are terms frequently used to describe such formations.

((43)) (52) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of ground water ((for agricultural, municipal, industrial, domestic, or commercial use)). Water wells include ground source heat pump borings and grounding wells.

((44)) (53) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

((45)) (54) "Water well report" means a document that describes how a water well, ground source heat pump, or grounding well was constructed or decommissioned and identifies components per the requirements of WAC 173-160-141.

(55) "Well alteration(s)" include(s): Deepening, hydrofracturing or other operations intended to increase well yields, or change the characteristics of the well. Well alteration does not include general maintenance, cleaning, sanitation, and pump replacement.

((46)) (56) "Well completion" means that construction has progressed to a point at which the drilling equipment has been removed from the site, or a point at which the well can be put to its intended use.

((47)) (57) "Well contractor" means a resource protection well contractor and water well contractor licensed and bonded under chapter 18.27 RCW.

(58) "Well driller(s)" or "driller(s)" is synonymous with "operator(s)."

((48)) (59) "Well" means water wells, resources protection wells, ((instrumentation wells,)) dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(60) "Well screen" means a device, usually made of plastic or metal that is capable of preventing unconsolidated or poorly consolidated geologic material from entering the well. The size of the material which is prevented from entering the well is predetermined and controlled by the screen opening or slot size of the screen. A well screen may include a riser pipe.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-141 What are the requirements regarding water well reports?** (1) Anyone who constructs or decommissions a well is required to submit a complete report on the construction, alteration, or decommissioning of the well to the ((department)) water resources program within thirty days after completion of a well, or after the drilling

equipment has left the site. Submission of well report to consulting firms does not meet the well contractor's obligation of this section.

(a) This applies to all water wells.

(b) The water well report must be made on a form provided by the department, or a reasonable facsimile of the form, as approved by the department.

(2) Where applicable the water well report must include, at least, the following information:

(a) Owner name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;

(b) Tax parcel number;

(c) Well location address;

(d) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;

(e) Unique well identification tag number;

(f) Construction date;

(g) Start notification number;

(h) Intended use of well;

(i) The well depth, diameter, and general specifications of each well;

(j) Total depth of casing;

(k) Well head elevation;

(l) Drilling method;

(m) Seal material, seal location and type of placement used;

(n) Filter pack location; filter pack material used;

(o) The thickness and character of each bed, stratum or formation penetrated by each well, including identification of each water bearing zone;

(p) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;

(q) The tested capacity of each well in gallons per minute, and the test duration and draw down of the water level at the end of the capacity test;

(r) Recovery data;

(s) For each nonflowing well, the depth to the static water level, as measured below the land surface;

(t) For each flowing well, the shut-in pressure measured above the land surface, or in pounds per square inch at the land surface; and

(u) Water right permit or certificate number for all wells that are not exempt under RCW 90.44.050; and

(v) Such additional factual information as may be required by the department.

(3) The well report must show the license number and signature of the person who constructed the well. If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed operator who witnessed the drilling. Water well reports for wells constructed by trainees shall have the signature and license number of the trainee and the licensed operator.

(4) If a well report is missing, a new report may be generated. This report shall contain all physical components of the well and report all available information in accordance with this section. The report shall be signed by the individual collecting the physical information of the well. Submittal of

this report does not relieve the person who constructed the well of their obligation to submit a complete well report under subsection (1) of this section.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-151 Does the department require prior notice and fees for well constructing, reconstructing, or decommissioning a water well?** (1) Yes. The property owner, owner's agent, or water well operator shall notify the department of their intent to begin well construction, reconstruction-alteration, or decommissioning procedures at least seventy-two hours before starting work.

(2) The notice of intent is submitted on forms provided by the department and must contain the following:

- (a) Well owner name;
- (b) Well location; street address; county name, 1/4, 1/4 section, township, and range, and tax parcel number;
- (c) Proposed use; (if the intended withdrawal requires a water right, the permit or certificate shall be attached to the notice of intent);
- (d) Approximate start and completion dates;
- (e) Contractor registration number;
- (f) Operator/trainee name and license number; and
- (g) Drilling company name.

(3) In an emergency, a public health emergency, or in exceptional instances, the department may allow verbal notification to the appropriate regional office, with a ((start card written notification follow up)) notice of intent and payment of fee submitted within twenty-four hours. An emergency situation may consist of a failing well, or water quality issues which could result in a public health or safety concern.

(4) The notice must be accompanied by the following fees which apply to all newly constructed or altered wells:

(a) The fee for one ((new)) water well, other than a dewatering well, with a top casing diameter of less than twelve inches is ((one)) two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one ((new)) water well, other than a dewatering well, with a top casing diameter of twelve inches or greater is ((two)) three hundred dollars.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion of horizontal lineal feet, of the dewatering well system.

((d) There is no fee for decommissioning)) (e) The fee to decommission a water well is fifty dollars.

(f) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(5) If drilling results in an unusable well (dry hole), there is no additional fee for a second attempt, provided:

(a) A subsequent attempt at constructing a new well is made immediately; and

(b) The unusable well(s) is properly decommissioned before drilling equipment leaves the well site; and

(c) The department is notified of all decommissionings; and

(d) A well report describing the decommissioning process is submitted to the department in accordance with this chapter.

(6) A new notice of intent and fee shall be required on all follow-up construction after the drilling equipment has left the drill site.

(7) A refund shall be made on any well that has not been constructed provided, a written request on an approved form is made by the person who paid the fee and is submitted to the department within ((twelve)) six months from the date the notice and fee were received by the department. ((A copy of the notice of intent receipt must accompany the request.))

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-161 How shall each water well be planned and constructed?** Every well must be planned and constructed so that it is:

(1) Adapted to those geologic and ground water conditions known to exist at the well site to insure utilization of any natural protection available;

(2) Not a conduit for contaminating the ground water or surface water nor a means of wasting water;

(3) Capable of yielding, where obtainable, the quantity of water necessary to satisfy the requirements the user has stated are needed and for which the well water is intended to be used.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-171 What are the requirements for the location of the well site and access to the well?** (1) The proposed water well shall be located on high ground that is not in the floodway.

(2) It shall be protected from a one hundred year flood and from any surface or subsurface drainage capable of impairing the quality of the ground water supply.

(3) All wells shall not be located within certain minimum distances of known or potential sources of contamination.

(a) Some examples of sources or potential sources of contamination include:

(i) Septic systems, including proposed and reserve sites under a valid septic design: Provided, that the design has been approved for installation by a health authority;

(ii) Manure, sewage, and industrial lagoons;

(iii) Landfills;

(iv) Hazardous waste sites;

(v) Sea((-))/salt water intrusion areas;

(vi) Chemical and petroleum storage areas;

(vii) Pipelines used to convey materials with contamination potential;

(viii) Livestock barns and livestock feed lots.

(b) Minimum set-back distances for water wells other than for public water supply are:

(i) Five feet from any existing building structure or building projection. Water wells shall not be located in garages, barns, storage buildings or ((inhabited)) dwellings. When locating a nonpublic water well adjacent to a building, the well location shall be measured from the building sewer and closest building projection.

(ii) Fifty feet from a septic tank, septic holding tank, septic containment vessel, septic pump chamber, and septic distribution box.

(iii) Fifty feet from building sewers, public sewers, collection and nonperforated sewer distribution lines except building drains.

(iv) One hundred feet from the edge of a drainfield, proposed drainfield which has been approved by a health authority, and reserve drainfield areas.

(v) One hundred feet from all other sources or potential sources of contamination except for solid waste landfills.

(vi) One thousand feet from the ((property)) boundary of a permitted or previously permitted (under chapter 173-304, 173-306, 173-351, or 173-350 WAC) solid waste landfill as defined by the permit; or one thousand feet from the property boundary of other solid waste landfills. Except, a variance may be granted if documentation is provided that demonstrates the construction and operation of the well adjacent to the landfill will not further degrade the environment and will not cause a public health risk.

(c) All public water supply wells shall be located by the department of health or the local health authority.

(i) Before construction begins, site approval must be obtained from the department of health, or the local health authority.

(ii) The requirements of the state board of health regulation regarding public water supplies shall apply.

(iii) This regulation includes requirements for zones of protection, location of the well, accessibility features, and certain construction requirements.

(4) In siting a well, the driller shall consider:

(a) All local and state water well construction regulations, policies, and ordinances;

(b) Permeability of the soil or rock;

(c) Adjacent land uses;

(d) Local ground water conditions; and

(e) End use of the well.

(5) ((When a well is located in an area of known or potential contamination, the water well casing and seal shall be impervious to the contaminants.))

((6))) Before construction, the water well operator should strongly emphasize to the well owner, the importance of retaining good accessibility to the well to permit future inspection, maintenance, supplementary construction, and decommissioning.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-191 What are the design and construction requirements for completing wells?** (1) You may complete wells with screens, perforated liners or pipe, or open bottom completion. The well driller or designer shall

advise the owner or the owner's representative of the most appropriate method of completion.

(2) All well components must be of sufficient strength to withstand the normal forces to which they are subjected during and after construction.

(3) Water wells must be completed in a manner which prevents the production of untreatable amounts of sand, silt, or turbid water which would render the well unusable.

(4) Open bottom completion is appropriate where the withdrawn waters are essentially free of sand, silt and turbidity.

(5) Perforated pipe completion is suitable for a coarse-grained, permeable aquifer where the withdrawn waters are free of sand, silt or turbidity.

(6) Perforations above the static water level are not permitted.

(7) In place perforations with Star, Mills knife, or similar type perforators are acceptable.

(8) Perforated pipe liners, either saw cut, torch cut, mill slotted, or punched are acceptable.

(9) The use of perforated casing for working casing as the hole is being drilled is prohibited, except in those cases where the contractor can, through personal experience in the particular area of drilling, attest to the sufficiency of the pre-perforated casing in all respects for the specific well being constructed.

(10) Pipe liners may be of steel, plastic or other suitable corrosion resistant material.

(11) All liners must be of sufficient strength to withstand normal forces exerted upon the liner material during installation and operation.

(12) Liners may be used only in ((a natural development or gravel packed type construction)) consolidated formations.

(13) The installation of a liner without a gravel pack is prohibited when conditions exist that will result in excessively turbid water.

(14) Well screens and well points must be constructed of compatible corrosion resistant material.

(a) A neoprene, or grout seal shall be fitted to the top of the well screen assembly, if necessary.

(b) The bottom of the well screen shall be plugged or capped.

(c) The use of lead packers is prohibited.

(15) The alignment of the bore hole, permanent casing, or liner shall be sufficiently plumb and straight to allow the installation of screens, liners, pumps, and pump columns without binding or having adverse affects on the operation of the installed pumping equipment.

(a) Alignment of the well casing or bore hole shall not deviate from an alignment that would allow a twenty foot test section of pipe to be inserted to the bottom of the well without binding.

(b) The diameter of the test section of pipe shall be per Table 1 in WAC 173-160-201.

(c) For testing alignment in casing reductions, each section shall be tested separately.

(16) For wells completed in an unconsolidated formation in which the bore hole extends beyond the completed casing or screen depth, the driller must backfill that portion of the bore hole that extends more than ten feet beyond the casing or

screen. The backfill shall consist of either bentonite or chlorinated sand or pea gravel. If any portion of the bore hole extension penetrates a clay layer which is greater than six feet in thickness, that portion of the bore hole shall be sealed with bentonite. A notice of intent to decommission a water well is not required for this work.

**AMENDATORY SECTION** (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

**WAC 173-160-201 What are the casing and liner requirements?** (1) Proper casing must be installed in all water supply wells.

(2) The casing shall withstand normal forces which act upon it during and after installation. It shall be resistant to the corrosive effects of the surrounding formations, earth, and water and shall be impervious to any contaminants encountered.

(3) All plastic casing ((for use)) or liner pipe used in potable water supply wells must be manufactured to conform to National Sanitation Foundation (NSF) Standard 14-84, or the most recent revision.

(4) Unless prior approval is obtained from the department, ((materials for)) well casings and liner pipes must be made of either steel ((casing as shown in Table 1)) or plastic ((casing as shown in Table 2)).

(5) Liner pipe must be of sufficient strength to withstand breakage or collapse when the well is pumped and meet ASTM potable water standards.

(6) When installed, liner pipe shall extend or telescope at least two feet into the lower end of the well casing. If more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe.

(7) Liner pipe may not be permanently fixed to a well casing below land surface.

(8) Minimum specifications for steel casing and steel liner pipe for water wells are shown in Table 1.

((6))) (9) Minimum specifications for plastic casing and plastic liner pipe for water wells are shown in Table 2.

(10) Steel casing larger than twenty inches shall have a minimum wall thickness of 0.375 inches.

TABLE 1  
Minimum Specifications for Steel Casing and Steel Liner Pipe

NOMINAL SIZE (inches)	OUTSIDE DIAMETER (inches)	WALL THICKNESS (inches)	WEIGHT PER FOOT (pounds)	TEST SECTION OUTSIDE DIAMETER (inches)
1.25	1.660	0.140	2.27	0.500
1.5	1.900	0.145	2.72	0.750
2.0	2.375	0.154	3.65	1.000
2.5	2.875	0.203	5.79	1.500
3.0	3.500	0.216	7.58	2.000
3.5	4.000	0.226	9.11	2.500
4.0	4.500	0.237	10.79	3.000
5.0	5.563	0.258	14.62	3.500
6.0	6.625	0.250	17.02	4.000

NOMINAL SIZE (inches)	OUTSIDE DIAMETER (inches)	WALL THICKNESS (inches)	WEIGHT PER FOOT (pounds)	TEST SECTION OUTSIDE DIAMETER (inches)
8.0	8.625	0.250	22.36	6.000
10	10.750	0.250	28.04	8.000
12	12.750	0.250	33.38	10.000
14	14.000	0.312	45.61	11.000
16	16.000	((0.344)) 0.375	57.52	14.000
18	18.000	0.375	70.59	16.000
20	20.000	0.375	78.60	18.000
24	24.000	0.375	94.62	20.000
30	30.000	0.375	118.65	24.000

TABLE 2  
Minimum Specifications for Plastic Casing and Plastic Liner Pipe

NOMINAL CASING DIAMETER (inches)	MINIMUM THICKNESS (inches)	SDR
2.0	0.133	21
2.5	0.137	21
3.0	0.167	21
3.5	0.190	21
4.0	0.214	21
4.5	0.236	21
5.0	0.265	21
6.0	0.316	21
8.0	0.410	21
10	0.511	21
12	0.606	21

#### STEEL CASING AND STEEL LINER

((7)) (11) All steel casing ((materials)) and steel liner must be new or, in like new condition, and be structurally sound.

(a) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the contamination can be entirely removed.

(b) When casing or liner lengths are joined together, they must be connected by watertight weld or screw coupled joints.

(i) Welded joints must be at least as thick as the wall thickness of the well casing and be fully penetrating.

(ii) All steel well casing or liner shall meet or exceed the minimum American Society for Testing and Materials (ASTM) A-53 A or B specification for steel pipe.

#### PLASTIC CASING AND PLASTIC LINER

((8)) (12) Plastic, fiberglass, PVC, SR, ABS, CPVC or other type of nonmetallic well casing or liner must be manufactured and installed to conform with ANSI/ASTM F 480-81, ((Standard Dimension Ratio (SDR) 21)) or the most recent revision.

(a) SDR is calculated by dividing the outside diameter of the pipe by the wall thickness.

(b) SDR 21 is the minimum requirement (Class 200); higher pressure rated pipe may be used.

(c) All plastic casing must be installed only in an oversized drill hole without driving. The oversized hole must be a diameter of at least 4 inches larger than the outside diameter of the plastic casing or coupling hubs, whichever is larger. Plastic casing and liner must be of sufficient strength to withstand breakage or collapse when installed and while the well is pumped. Plastic casing and liner must meet ASTM potable water standards.

(d) All plastic casing or liner must be new or, in like new condition and clearly marked by the manufacturer showing nominal size, class, type of plastic material, SDR, ASTM designation, and have a National Sanitation Foundation (NSF) seal of approval for use in potable water supplies.

(e) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the ((~~construction can be~~) contaminant is entirely removed.

(f) Plastic casing or liner joints must be watertight.

(i) Either "bell" type, threaded joints, or coupling hubs are approved.

(ii) Hub couplings must be of materials meeting the specifications for plastic casings as stipulated in subsection (2) of this section.

(iii) If joints are secured with solvent cement, it must be done in accordance with manufacturer's directions.

((g) Table 2 is the manufacturer's recommendations for specifications of plastic casing.

**TABLE 2**  
**Minimum Specifications for Plastic Casing**

NOMINAL CASING DIAMETER (inches)	MINIMUM THICKNESS (inches)	SDR
2.0	0.1332+	21
2.5	0.1372+	21
3.0	0.1672+	21
3.5	0.1902+	21
4.0	0.2142+	21
4.5	0.2362+	21
5.0	0.2652+	21
6.0	0.3162+	21
8.0	0.4102+	21
10	0.5112+	21
12	0.6062+	21

#### LINER PIPE

(9) Liner pipe must consist of steel, in new or like new condition, free of pits or breaks; or polyvinyl chloride (PVC), CPVC, type 1120, with SDR 21 (Class 200) or greater wall thickness. All PVC must be clearly marked to identify the type, class, and SDR.

(a) Liner pipe must be of sufficient strength to withstand breakage or collapse when the well is pumped and meet ASTM potable water standards.

(b) When installed, liner pipe shall extend or telescope at least two feet into the lower end of the well casing. If more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe.

(e) Liner pipe may not be permanently fixed to a well casing below land surface.))

#### CONCRETE CURBING

((10)) (13) The concrete used to make curbing must consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete.

(a) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(b) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

((11)) (14) The curbing shall be at least six inches thick and free of voids. The walls shall be poured in one continuous operation.

((12)) (15) When concrete tile is used to line a well, the combined total wall thickness and seal shall be a minimum of six inches.

#### AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

#### WAC 173-160-221 What are the standards for sealing materials? (1) Bentonite sealant:

(a) Bentonite used to prepare slurries for sealing, or decommissioning shall be specifically designed for this purpose. At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF. Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries. The active solids shall be checked by using the following formula:

$$\frac{\text{Weight of bentonite (lbs.)}}{\text{Weight of bentonite (lbs.)} + (\text{gallons of water} \times 8.33 \text{ lbs./gal})} \times 100 = \% \text{ solids}$$

Example: 105 lbs. of bentonite X 100= 20% solids

$$\frac{105 \text{ lbs. bentonite}}{(50 \text{ gallons of water} \times 8.33 \text{ lbs./gal})} \times 100 = 20\%$$

(b) Unhydrated bentonite—pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers. Placement of

bentonite shall conform to the manufacturer's specifications and result in a seal free of voids or bridges.

**(2) Cement sealants:**

(a) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than six gallons of potable water per sack of cement (ninety-four pounds per sack).

(b) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is added to improve flow qualities and compensate for shrinkage.

(c) Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.

(i) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(ii) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(iii) The quantity of water used for each batch of cement sealant shall not exceed manufacturer's recommendation.

(d) Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon) per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(e) Controlled density fill (CDF) or fly ash shall not be used in any well construction or decommissioning.

(f) All cement sealants shall be mechanically mixed prior to placing in the well or bore hole.

**(3) Sealing methods:**

(a) When neat cement or neat cement grout is used in sealing, it shall be placed seventy-two hours before additional drilling takes place, unless special additives are mixed with the neat cement or neat cement grout that cause it to set in a shorter period of time.

(b) All hydrated sealing materials shall be placed by tremmying the mixture from the bottom of the annular space to the surface in one continuous operation.

(4) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

(5) Sealing materials shall be impervious to any contaminants encountered.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-231 What are the standards for surface seals?** (1) All water wells constructed shall have a surface seal which seals the annular space between the bore hole and the permanent surface casing.

(a) The seal shall be constructed to prevent surface contaminants from reaching the ground water.

(b) The surface seal must have a minimum diameter of four inches larger than the nominal size of the surface casing,

to include the outside diameter of the bell, in bell and hub couplings.

(c) The surface seal must extend from land surface to a minimum depth of eighteen feet. Except, when the minimum surface seal requirements for driven, jetted, dewatering and some dug wells are less than eighteen feet. See the appropriate section for these wells for a detailed description of their sealing requirements.

(2) Sealing material must be placed in an open annular space that is a minimum of four inches greater in diameter than the nominal size of the permanent casing.

(3) The completed surface seal must fully surround the permanent casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil.

(4) After the permanent casing has been set in final position, the annular space shall be filled to land surface with bentonite or neat cement grout or neat cement. Leaving voids for future installation of equipment such as a pitless adapter is prohibited.

(5) A temporary surface casing with a minimum length of eighteen feet and a minimum nominal diameter of four inches greater than the permanent casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed. Except driven and jetted wells shall utilize a temporary surface casing with a minimum length of six feet and a minimum nominal diameter of four inches greater than the permanent casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed.

(6) Whenever reconstruction involves permanent surface casing movement; or the existing surface seal is damaged; or a surface seal never existed; the driller shall repair, replace, or install a minimum of eighteen feet of surface seal around the permanent casing.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-241 What are the requirements for formation sealing?** (1) Unconsolidated formation sealing - Without significant clay beds or other confining formations - Drilled wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations shall be sealed in accordance with the surface sealing requirements of WAC 173-160-231. See Figure 1.

(2) Unconsolidated formation sealing - With significant clay beds or other significant confining formations - Drilled wells that penetrate an aquifer overlain by clay or other confining formations that are at least six feet thick, shall be sealed to prevent movement of water or contamination in the annular space between the permanent casing and the clay or other confining formation(s). One of the following methods shall be used to seal the annular space:

(a) A drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from the land surface into the clay bed or other confin-

ing formation located directly above the aquifer to be developed. The annular space shall be filled with bentonite (slurry or unhydrated), neat cement grout, or neat cement to form a watertight seal between the permanent casing and all significant confining formations encountered during drilling. If bentonite slurry, neat cement grout, or neat cement is used to seal the annular space it must be placed by either pumping or tremmying the seal material from the lowest clay bed or other confining formation of significance encountered, to land surface. The drill hole shall be kept open through the use of a temporary casing or any other drilling method that stabilizes the bore hole wall. See Figure 1.

(b) An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend to a minimum of eighteen feet from land surface. A temporary casing or other means of maintaining an open bore hole shall be utilized. All temporary casing will have an outside diameter of a minimum of four inches larger than the permanent casing (for example, a ten-inch temporary casing for a six-inch permanent casing). The upper drill hole shall always contain a minimum of nine feet of sealant throughout the advancement of the permanent casing. Except, if the temporary casing is removed or not utilized, the upper drill hole shall be kept full of sealant. See Figure 1.

(3) Consolidated formations - In drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures.

(a) Procedure one - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface into a sound, unfractured, consolidated formation. An unperforated permanent casing shall be installed to extend to this same depth, and the lower part of the casing shall be driven ((and sealed)) into the consolidated formation ((to establish)) and sealed in a manner that establishes a watertight seal between the formation and the casing. The remainder of the annular space to land surface shall be filled with neat cement grout, neat cement, or bentonite.

(i) If the consolidated formation is encountered at a depth less than eighteen feet from land surface, the upper drill hole and permanent casing shall extend to a minimum of eighteen feet from land surface. See Figure 2.

(ii) If neat cement grout, neat cement, or bentonite slurry is placed by pumping to seal the entire annulus from the bottom up to land surface, the upper drill hole may be a minimum of two inches larger than the outside diameter of the permanent casing.

(b) Procedure two - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent casing extends from land surface to a depth of at least eighteen feet. An unperforated permanent casing shall be driven into the consolidated formation and sealed in a manner that establishes a watertight seal between the formation and the casing. Throughout the driving of the well casing to the consolidated formation, the annular space between the upper drill hole and the permanent casing shall be kept at least one-half full with unhydrated bentonite, or bentonite slurry. The remainder of the annular space to land surface shall be filled with cement grout, neat cement, or bentonite. See Figure 2.

(c) If temporary surface casing is used in either procedure (a) or (b) of this subsection, the casing must be a minimum of eighteen feet long and at least four inches larger in diameter than the permanent casing. If a consolidated formation is encountered within the first eighteen feet, the temporary casing may terminate at the interface of the consolidated formation. Withdrawal of the temporary casing must take place simultaneously with proper sealing of the annular space to land surface.

#### AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-261 How do I seal dug wells?** The surface seal of all dug wells shall be constructed to effectively seal the annular space between the undisturbed native material of the upper well hole and the well curbing, which may consist of (concrete tile, steel pipe or liner). The seal depth shall be at least eighteen feet from land ((~~to~~)) surface or to within three feet of the bottom in dug wells that are less than twenty-one feet in depth. Dug wells may be sealed with cement, neat cement, bentonite, or neat cement grout. A cap shall be placed on all dug wells. Except during maintenance, the cap shall remain in place. The cap shall prevent entry of pollutants, insects, and mammals into the well. See Figure 3.

#### AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-271 What are the special sealing standards for driven wells, jetted wells, and dewatering wells?**

(1) Driven wells - An upper hole at least four inches greater in diameter than the permanent casing shall extend a minimum of six feet below land surface. The annular space between the upper oversized drill hole and the permanent casing must be kept at least one-half full with bentonite or bentonite slurry throughout all driving of the pipe. The remaining annular space to land surface shall be filled with neat cement grout, neat cement, or bentonite. See Figure 4.

(2) Jetted wells - The surface seal in jetted wells shall be constructed to seal the annular space between the permanent casing and undisturbed native soil. An upper hole at least four inches greater in diameter than the permanent casing shall extend a minimum of six feet below land surface.

(3) Dewatering wells:

(a) Permanent dewatering wells shall be sealed ((~~to a depth of eighteen feet or within three feet of the bottom of the well for wells less than twenty-one feet deep. The minimum annular space requirements, sealing material, and decommissioning procedures of this chapter apply to all permanent dewatering wells.~~))

(b) Temporary dewatering wells - Dewatering wells that are in place less than eighteen months and are less than eighteen feet deep are exempt from the sealing requirements of this chapter. Temporary wells that are installed over eighteen months and that are deeper than eighteen feet, must have a minimum of eighteen feet of surface seal and meet the minimum annular space requirements and sealing materials authorized under)) in one of the following manners:

(i) For wells in which the top of the screen interval is greater than twenty-one feet below land surface, the minimum sealing depth shall be eighteen feet.

(ii) If the top of the screen interval is twenty-one feet or less below the land surface, the seal shall be within three feet of the top of the screen. In no instance shall the seal be less than ten feet in depth.

(iii) All permanent dewatering wells shall be constructed to prevent interconnection of separate aquifers penetrated by the well, and provide casing stability.

(b) Temporary dewatering wells are wells that are in place less than twelve months.

(i) Temporary dewatering wells shall have a minimum of a three-foot surface seal.

(ii) Temporary dewatering wells that connect different aquifers, allowing waters to commingle, must have a dewatering plan that addresses and mitigates potential inter-aquifer transfer and cross-contamination.

(iii) All temporary dewatering wells must be decommissioned or reconstructed to meet standards for permanent dewatering wells within twelve months from the date of installation.

(c) The minimum annular space requirements, sealing material, and decommissioning procedures of this chapter apply to all dewatering wells. This includes wells that have been cut down, altered or damaged during the dewatering process. Temporary dewatering wells located within an area to be excavated for construction are exempt from these sealing requirements but are required to be decommissioned in accordance with this chapter.

**AMENDATORY SECTION** (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

**WAC 173-160-291 What are the standards for the upper terminal of water wells?** (1) The watertight casing or curbing of any well shall extend at least six inches above the ground surface. Pit completion is prohibited.

(2) Where the site is subject to flooding, the top of the casing must be at least two feet above the estimated water level of a one hundred-year frequency flood.

(3) All wells shall be equipped with an access port that allows for the measurement of the depth to water surface, or with a pressure gage that indicates the shut-in pressure of a flowing artesian well. See Figure 6. The access ports and pressure gages or other openings in the cover are sealed or capped to prevent entrance of surface water or foreign material into the well.

(4) Any vent opening, observation ports or air-line equipment shall extend from the upper end of the well by watertight piping to a point at least six inches above land surface. The terminals of these facilities shall be shielded or sealed to prevent entrance of foreign matter or pollutants.

(5) A pitless adapter, or similar device is permitted on water wells if it is made with fittings approved by the department of health. The use and installation of pitless adapters must meet manufacturer's standards. The connection must be above static water level except for adapters specifically designed for installation below static water level.

(6) Any person who removes any part of a surface seal to install a pitless adapter shall ((repair the seal)) be responsible to have the seal repaired by a licensed or otherwise qualified person so that ((it)) the seal is brought up to land surface.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-311 What are the well tagging requirements?** (1) It shall be the operator's responsibility to place a well identification tag with a unique identification number on every well that they construct, alter, or reconstruct within thirty days of completion of the well. The original unique identification number shall be used on all subsequent work and documentation.

(a) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(b) The operator shall remove the well identification tag on all wells they decommission and shall attach the tag to the decommissioning well report.

(2) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every well they own, unless the well has been previously tagged.

(a) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(b) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(3) The well tag shall be permanently attached to the outer well casing or other prominent well feature and be visible above land surface.

(4) All well identification tags shall be supplied by the department.

(5) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-321 How do I test a well?** (1) Well authorized by appropriation permit - Before being put to use, each well shall be test pumped for yield and draw down. Reports of the test pumping shall be submitted as required in chapter 90.44 RCW. The driller shall be familiar with and meet all testing procedures outlined in the water right permit. The well shall be test pumped at rates equal to, or greater than, are expected from the well during its normal usage. The test pump for public water supply wells shall be operated continuously for a minimum of four hours, or longer if required by the department of health. The yield and draw down shall be determined following at least four hours of ((stabilized water level observation)) constant rate pumping. Periodic water level observation should be made during draw down and subsequent recovery periods. Periods of observation shall be more frequent during the onset of the draw down and may decrease in frequency as the draw down or recovery proceeds ((toward stabilization)). A bailer test is not an acceptable substitute for testing wells under permit or for public water supply wells.

(2) Wells not requiring appropriation permit - Testing of a well that does not require an appropriation permit shall be

conducted at a constant rate for a period of at least one hour or longer if required by the department of health. ((The last twenty minutes of the test shall be conducted at a constant rate of withdrawal to achieve a stabilized pumping level.)) Test pumping under this section can be either by bailer, air lift, or with a pump.

(3) Test data shall be reported to the department on the water well report by the operator at the time the report is submitted.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-371 What are the standards for chemical conditioning?** The use of detergents, chlorine, acids or other chemicals in wells for the purpose of increasing or restoring yield, shall be used according to manufacturer's recommendations. Within a consolidated formation, the placement or use of packers and subsequent pressurization within the bore hole or casing while cleaning or hydrofracturing shall not damage the seal at the drive shoe. Except for ((routine maintenance and cleaning)) disinfection and cleaning of wells, a well drilling license is required for all other chemical conditioning that alters the condition of the water well.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-381 What are the standards for decommissioning a well?** Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned. The decommissioning procedure (as prescribed by these regulations) must be recorded and reported as required by the department.

(1) Cased wells. Remove all liners, debris, and obstructions from the well casing, except well screens and packers. All cased water wells ((that were not constructed in accordance with these regulations, or wells which are decommissioned to allow the placement of potential sources of contamination within one hundred feet of the well, or for which a drilling report required under WAC 173-160-141 is missing,)) shall be decommissioned in one of the following ways:

(a) Perforate the casing from the bottom to within five feet of the land surface and pressure ((grout)) seal the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. ((Each cut shall be at least one and one-half inches long)) The perforations must be sufficient enough to allow neat cement grout or neat cement, or bentonite slurry to migrate outside the casing and effectively prevent the movement of water.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The ((remainder of the)) casing shall be filled completely with neat cement grout, neat cement, or bentonite slurry. The screen and up to five feet of riser pipe may be filled with unhydrated bentonite. The remainder of the riser pipe must be removed.

(iv) The casing may be cut off at a maximum of five feet below land surface. A steel cap shall be welded on the casing; or

(b) Withdraw the casing and fill the bore hole with neat cement grout, neat cement, unhydrated bentonite, or bentonite slurry as the casing is being withdrawn.

(2) ((If it can be verified through a field examination and review of the drilling report that a water supply well was constructed in accordance with these regulations, and it is not being decommissioned to allow the siting of potential sources of contamination within one hundred feet of the well, it shall be decommissioned by the casing removal, or casing perforation methods described in subsection (1)(a) or (b) of this section or by:

(a) Filling the casing from bottom to within five feet of land surface with bentonite, cement grout, or neat cement.

(b) The casing may be cut off at a maximum of five feet below land surface.

((3))) Uncased wells - ((Backfill)) Remove all liners, debris, and obstructions. Seal uncased wells with concrete, neat cement grout, neat cement, or bentonite.

((4))) (3) Dug wells -

(a) The following criteria are required for the decommissioning of all dug wells:

(i) Remove all debris and obstructions that impede decommissioning or that may contaminate the aquifer from within the dug well. ((Install clean chlorinated sand or pea gravel to a point two feet above static water level. Fill the remainder of the well with concrete or bentonite to the land surface. Dug wells with static levels below twenty feet from land surface, may be decommissioned by placing chlorinated sand or pea gravel to the static level and then placing alternating layers of sealing material and chlorinated sand or pea gravel to within twenty feet of land surface. The alternating layers of sand or pea gravel must be a maximum of five feet thick. The minimum thickness of the sealing material layers must be five feet. The remainder of the dug well to a maximum of two feet below land surface shall be filled with bentonite, neat cement, cement grout, or concrete. Bentonite slurry shall not be used to decommission dug wells.))

(ii) Dug wells may have a maximum of three feet of soil cover from top of sealing material to land surface.

(iii) Dug wells shall be sealed with either unhydrated bentonite, neat cement, neat cement grout, or concrete. The use of controlled density fill (CDF), bentonite slurry, or fly ash is prohibited.

(iv) Dug wells that are not cast-in-place must have a minimum of three feet of sealing material in contact with native soil below land surface. Bentonite slurry shall not be used to decommission dug wells.

(b) Dug wells that are dry at any time during the year and that are less than twenty feet in depth shall be sealed from the bottom to within three feet of land surface.

(c) Dug wells that have a static water level of ten feet from land surface or less and a depth of less than twenty feet may be decommissioned by installing clean chlorinated sand or pea gravel to a maximum depth of ten feet below land surface. Otherwise, the well shall be filled with either unhydrated bentonite, neat cement, neat cement grout, or concrete.

(d) Dug wells that have a static water level over ten feet and a depth of less than twenty feet from land surface may be decommissioned by installing clean chlorinated sand or pea gravel to the static level. Otherwise, the well shall be filled with either unhydrated bentonite, neat cement, neat cement grout, or cement.

(e) Dug wells with static levels twenty feet or less from the land surface and that are greater than twenty feet deep may be decommissioned by placing chlorinated sand or pea gravel to twenty feet below land surface. Otherwise, the well, to a maximum of three feet below land surface, shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete.

(f) Dug wells with static levels below twenty feet from land surface, may be decommissioned by placing chlorinated sand or pea gravel to the static level and then placing alternating layers of sealing material and chlorinated sand or pea gravel to within twenty feet of land surface. The alternating layers of sand or pea gravel must be a maximum of five feet thick. The minimum thickness of the sealing material layers must be five feet. Otherwise, the dug well shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete to a maximum of three feet below land surface.

(4) Flowing artesian wells that are not leaking on the outside of the casing shall be decommissioned by pressure grouting with neat cement or weighted high solids bentonite slurry from the bottom of the well bore to land surface. If the well is leaking on the outside of the casing or if leaking develops while the decommissioning method above is employed, then the casing must be perforated and pressure grouted to replace all confining layers and to stop leakage.

(5) Placement of sealing material.

(a) Sealing material placed below the static water level shall be piped directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. As the sealing material is placed, the existing well tile may be encapsulated into the seal material. If ((cement)) concrete, neat cement grout, bentonite, bentonite slurry, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place concrete, neat cement, neat cement grout, or bentonite slurry the discharge end of the tremie tube shall be submerged in the ((grout)) sealing material to avoid breaking the seal while filling the annular space.

(b) All authorized sealing material placed above the static water level or into the dewatered portion of the well may be hand poured above the static water level, provided the material does not dilute or segregate, and ((the resulting)) result in a seal ((is)) free of voids.

(c) When decommissioning wells that were originally constructed without casing, unhydrated bentonite chips or pellets may be hand placed, provided it forms a continuous seal.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-400 What are the minimum standards for resource protection wells and geotechnical soil bor-**

ings? The following minimum standards shall apply to all resource protection wells and geotechnical soil borings constructed in the state of Washington. It is the responsibility of ((theresourcee)) the resource protection well operator, resource protection well contractor, and the property owner to take whatever measures are necessary to guard against waste and contamination of the ground water resource.

(1) It will be necessary in some cases to construct resource protection wells and geotechnical soil borings with additional requirements beyond the minimum standards.

(2) Nothing in this section limits the department's authority to approve comparable alternative specifications for construction as technology in the industry is developed, or new methods of construction become known to the department.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-410 What are the specific definitions for words in this chapter?** This section specifically defines words associated with resource protection wells and geotechnical soil borings. To find the definitions of other words, see WAC 173-160-111.

(1) ("Geotechnical information" means subsurface engineering properties used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability samples to ascertain structural properties of the subsurface.) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(2) "Geotechnical soil boring" or "boring" means an uncased well drilled for the purpose of obtaining soil samples to ascertain structural properties of the subsurface. ((Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uneased ground penetration for geotechnical information.))

(3) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(4) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(5) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes bore hole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

((4)) "Lysimeter" means a well used to withdraw soil water or pore samples from subsurface soil or rock above the water table for chemical, physical, or biological testing.

((5))) (6) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevations in either clean or contaminated water or soil.

((6))) (7) "Nested well" means the installation of more than one cased resource protection well in one bore hole. This does not preclude casing reductions or installation of vibrating wire piezometers.

((7))) (8) "Observation well" means a well designed to measure the depth to the water or water level elevation in either clean or contaminated water or soil.

((8))) (9) "Piezometer" means a well designed to measure water level elevation at a specific depth beneath the water table.

((9))) (10) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

((10))) (11) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

((11))) (12) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

((12))) (13) "Resource protection report" or "geotechnical soil boring report" means a document that describes how a resource protection well or geotechnical soil boring was constructed or decommissioned and identifies its components per the requirements of WAC 173-160-420.

(14) "Spill response well" means a well used to capture or recover any spilled or leaked fluid which has the potential to, or has contaminated the ground water.

((13))) (15) "Structural properties" means subsurface engineering properties or geotechnical information used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability samples.

(16) "Vapor extraction well" means a well used to withdraw gases or vapors from soil, rock, landfill, backfill or ground water for the purpose of investigating or remediating soil ((and/or) ground water contamination or managing gases or vapors.

((14))) (17) "Well driller" or "driller" means a resource protection well contractor or operator and a water well contractor or operator.

((15))) (18) "Well" means water wells, resources protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or

natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

**AMENDATORY SECTION** (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

**WAC 173-160-420 What are the general construction requirements for resource protection wells?** (1) No resource protection well or soil boring excavation may be used to withdraw or inject water for domestic, industrial, municipal, commercial, or agricultural purposes.

(2) No resource protection well or soil boring excavation may interconnect aquifers.

(3) Nested resource protection wells are prohibited.

(4) Cuttings, development water, and other investigation derived waste from resource protection well construction or geotechnical soil borings shall be managed in a manner consistent with the intent and purposes of the Water Pollution Control Act, chapter 90.48 RCW, the Hazardous Waste Management Act, chapter 70.105 RCW, and implementing regulations.

(5) Well tagging:

(a) It shall be the driller's responsibility to place a well identification tag with a unique identification number on every resource protection well that they construct or alter within thirty days of completion of the well. Uncased geotechnical soil borings and environmental investigation wells are exempt from the tagging requirements of this chapter.

(i) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(ii) The driller shall remove the well identification tag on all resource protection wells they decommission and shall attach the tag to the decommissioning well report.

(b) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every resource protection well they own and which was completed prior to the effective date of this regulation.

(i) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(ii) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(c) The well tag shall be permanently attached to the outer well casing and be visible above land surface for all wells which have been completed above land surface. For wells completed below land surface, the well tag shall be attached to the well casing or to any permanent and protected portion of the vault.

(d) All well identification tags shall be supplied by the department.

(e) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

(6) All resource protection wells will be sealed in accordance with ((this chapter)) WAC 173-160-450 regardless of the method of installation. Except, resource protection wells that are properly decommissioned prior to the removal of any drilling equipment from the well location are exempted from the surface sealing requirements of this chapter. Provided the

decommissioning process includes the removal of any conduit, tubing, probe, or other items inserted into the ground.

(7) All geotechnical soil borings shall be decommissioned under the terms of this chapter.

(8) Except as provided in RCW 18.104.180, all construction, alteration, reconstruction, and decommissioning of resource protection wells and geotechnical soil borings shall be done by an individual licensed under the provisions of chapter 173-162 WAC.

(9) A notice of intent to construct or decommission a resource protection well and a geotechnical soil boring shall be filed with the department a minimum of seventy-two hours prior to initiating construction or decommissioning of the well(s) or boring(s). A fee must accompany each notice of intent to construct or decommission a resource protection well. ((The fee for constructing, altering, or reconstructing each resource protection well is forty dollars. Geotechnical soil borings are EXEMPT from all fees.))

(a) The fee for a resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(b) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for the construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(e) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars. Under some circumstances, it may be necessary to construct more resource protection wells or geotechnical soil borings than originally anticipated. When additional resource protection wells are constructed on a site for which a notice of intent and fee were submitted, a second notice and fee shall be submitted within twenty-four hours after all wells have been completed or as soon as the final number of wells to be constructed is determined, whichever is sooner. When additional geotechnical soil borings are needed, the borings may be completed. A follow-up notice of intent shall be submitted to the department within twenty-four hours after all borings are constructed. Notification to construct multiple wells or geotechnical soil borings within the same quarter/quater section, township, and range may be submitted on one notice form. ((A fee of forty dollars per well must be attached to each notice. Example: Six resource protection wells identified on one notice of intent would be submitted along with a two hundred forty dollar fee.))

(10) Resource protection well and geotechnical soil boring drilling reports.

(a) Every well contractor is required to submit a complete report on the construction, alteration, or decommissioning of all resource protection wells and geotechnical soil borings they construct. Reports must be submitted to the ((department)) water resources program within thirty days after completion of construction, alteration, or decommissioning. Submission of well report to consulting firms does not meet the well contractor's obligation of this section.

(b) This applies to all resource protection wells and geotechnical soil borings.

(c) The resource protection well and geotechnical soil boring report must be made on a form provided by the department, or a reasonable facsimile of the form, as approved by the department.

(d) Where applicable the report shall include the following information:

(i) Owner's name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;

(ii) Tax parcel number;

(iii) Well location address;

(iv) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;

(v) Unique well identification tag number;

(vi) Construction date;

(vii) Start notification number;

(viii) Intended use of well;

(ix) The well depth, diameter, and general specifications of each well;

(x) Total depth of casing;

(xi) Well head elevation;

(xii) Drilling method;

(xiii) Seal material, seal location and type of placement used;

(xiv) Filter pack location; filter pack material used;

(xv) The thickness and character of each bed, stratum or formation penetrated by each well including identification of each water bearing zone;

(xvi) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;

(xvii) The depth to the static water level, as measured below the land surface; and

(xviii) Such additional factual information as may be required by the department.

(e) The well report must show the license number and signature of the person who constructed the well. If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed individual who witnessed the drilling. Resource protection well reports for wells constructed by trainees shall have the signature and license number of the trainee and licensed operator.

#### **What are the surface protection requirements?**

(11) All resource protection wells shall be capped and protected using one of the following methods:

(a) If the well is cased with metal and completed above the ground surface, you must attach a watertight cap with a lock to the top of the casing.

(b) If the well is not cased with metal and completed above the land surface, you must install a protective metal casing over and around the well. The protective casing shall extend at least six inches above the top of the well casing and be cemented at least two feet into the ground. A cap with lock shall be attached to the top of the protective casing.

(12) You shall protect the well(s) completed above ground from damage by:

(a) Cementing three metal posts, at least three inches in diameter, in a triangular array around the casing and at least two feet from it. Each post shall extend at least three feet above and below the land surface.

(b) A reinforced concrete pad may be installed to protect against and prevent frost heave. If installed, the concrete pad shall extend to a depth equal to anticipated frost depth. When a concrete pad is used, the well seal may be part of the concrete pad.

(13) If the well is completed below land surface, a watertight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent the inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The cover must be designed to withstand the maximum expected loading.

(14) The protective measures may be waived or modified upon written approval from the department (a variance).

(15) If the well is damaged, the well protection measures and casing shall be repaired to meet the requirements of this chapter. If the well is damaged beyond repair, it shall be decommissioned in accordance with WAC 173-160-460.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-430 What are the minimum casing standards?** The casing may not effect or interfere with the chemical, physical, radiological, or biological constituents of interest. The casing shall also withstand normal forces which act upon it during and after installation. All resource protection well casing shall conform to ASTM Standards, or at least 304 or 316 stainless steel, PTFE, or Schedule 40 PVC casing.

**AMENDATORY SECTION** (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

**WAC 173-160-450 What are the well sealing requirements?** (1) All resource protection wells constructed shall have a continuous seal, which seals the annular space between the bore hole and the permanent casing. The seal shall be constructed to prevent interconnection of separate aquifers penetrated by the well, and shall provide casing stability. Except for environmental investigation wells, the seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. The filter pack shall be no less than one foot or greater than five feet above the screen interval. See Figure 7. Wells that are installed using

direct push technology will follow the sealing guidelines of WAC 173-160-451.

(2) After the permanent casing has been set in final position, the filter pack (optional) and sealing material shall be placed in the open bore hole annular space that must be a minimum of four inches greater in diameter than the nominal size of the permanent casing. After installing the filter pack (optional) a layer of bentonite shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval. Insure that placement will not disturb the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with bentonite, neat cement, or cement grout. If a cement/bentonite slurry is used as the sealant, it shall be installed with a ((tremie)) tremie tube and pumped from the top of the bentonite plug (above the filter pack) to land surface. Use only potable water to hydrate the mixture.

(3) The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompaacted soil.

(4) All sealing materials used shall conform to one of the following minimum requirements:

**(a) Bentonite sealants:**

(i) Bentonite used to prepare slurries for sealing, or decommissioning shall be specifically designed for this purpose. At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF. Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries.

(ii) Unhydrated bentonite—pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of resource protection wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will support or promote the growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers. Placement of bentonite shall conform to the manufacturer's specifications and result in a seal free of voids or bridges.

**(b) Cement sealants:**

(i) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than six gallons of potable water per sack of cement (ninety-four pounds per sack).

(ii) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is to be added to improve flow qualities and compensate for shrinkage.

(iii) Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.

(A) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(B) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(iv) Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon) per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(5) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

#### NEW SECTION

**WAC 173-160-451 What are the minimum standards for direct push resource protection wells?** (1) Resource protection wells that are installed using direct push technology shall comply with the applicable standards in these rules for reporting, casing, screening, development, surface protection, cleaning, tagging, and completion.

(2) Resource protection wells that are installed using direct push technology shall also comply with the following standards:

(a) Prepacked or sand packed screens shall be used. The sand pack or filter pack shall not extend more than three feet above the top or one foot below the bottom of the well screen; and

(b) The outside diameter of the bore hole shall be a minimum of one inch greater than the outside diameter of the well casing; and

(c) Granular bentonite shall not be used in the sealed interval below the static water level. Prepacked or slurry sealant is required below static level. Any sealing method used must result in a continuous and effective seal meeting the minimum sealing standards of this chapter; and

(d) Direct push wells shall not be constructed through more than one water bearing formation and the seal shall be from the top of the sand pack to land surface. Direct push wells shall not be greater than thirty feet in depth unless a variance is obtained. A request for a variance must be accompanied by a site-specific plan; and

(e) If the total probe depth exceeds the depth of the bottom of the screen it must be properly decommissioned to the bottom of the screen.

#### NEW SECTION

**WAC 173-160-453 What are the minimum standards for construction of ground source heat pump borings?** (1) General requirements.

(a) Applicability of minimum standards. The minimum standards set forth herein apply to all ground source heat pump borings as defined in WAC 173-160-111, constructed by a licensed operator.

(b) Prohibition against other uses. Ground source heat pump borings cannot be used for any purpose other than heat

exchange. After completion, ground source heat pump borings shall not be converted to any other type of well except by written approval by the department. The operator shall ensure that the ground source heat pump boring is constructed according to this chapter.

(2) Location of ground source heat pump borings.

(a) A ground source heat pump boring shall not be located within one hundred feet from any water supply well.

(b) The setback from public water supply wells for ground source heat pump borings must comply with applicable department of health sanitary control zone regulations for the public water supply wells. Where the sanitary control zone is greater than one hundred feet the setback should reflect the expanded distance.

(c) Variances to the standard setback for water supply wells can be obtained when:

(i) The approved sanitary control zone for the public supply well is less than one hundred feet. Notification and concurrence is required from the department of health to insure that the new setback is consistent with the approved public water supply well sanitary control zone. Variances for public supply wells will be issued by the local or state health authority.

(ii) The water supply well is not a public water supply well and the reduced set back is adequate to protect against encroachment on the well and can provide adequate protection against potential contamination. The reduced set back shall be no more than seventy-five feet.

(d) No variance shall be approved for a setback less than the approved sanitary control zone for a water supply well, unless it can be demonstrated that the water supply well is hydrogeologically protected from any potential threat posed by the closed-loop heat system.

(3) Construction standards for ground source heat pump borings. Site specific conditions shall be assessed to determine the best method and materials to be used for sealing the well annulus to protect the ground water.

(a) Casing material. If permanent casing is needed in a ground source heat pump boring, it must meet standards set out in WAC 173-160-201 for steel and for plastic.

(b) In a closed-loop ground source heat pump boring, the material used to make up the heat exchange loop that is placed into the ground must be able to withstand the normal forces which act upon it during and after construction. It shall be resistant to the corrosive effects of the surrounding formations, earth, water, and heat exchange fluids within the pipe.

(c) Pressure testing. Pressure testing will be done in accordance with manufacturer recommended specifications. The closed-loop assembly pipe within the bore hole shall not leak or cause contamination to the ground water.

(d) All fluids used in the construction and testing of ground source heat pump borings will be handled and utilized in a manner that does not contaminate the ground or surface waters of the state.

(e) Bore hole size. The hole size for ground source heat pump borings must be of sufficient size to allow placement of the heat exchange loop and, tremie pipe, but in no case shall the bore hole diameter be less than six inches when one inch loop pipe is installed. When a loop pipe greater than one inch

is utilized, the size of the bore hole will be determined by ecology.

(f) Grouting of an uncased bore hole. Grouting (sealing) the bore hole of a ground source heat pump boring must be completed immediately after the heat exchange loop is installed to avoid cave in of the uncased hole. The near surface area where the ground source heat pump borings will be connected to a manifold to connect it to the closed-loop system may be filled with earth materials.

(i) Sealing must be done with an active solids content bentonite grout slurry (minimum twenty percent active solids by weight) per WAC 173-160-221. Use of controlled density fill (CDF) is prohibited.

(ii) Sealing material placed in the bore hole shall be uncontaminated; drilling fluids must be purged from the bore hole during the installation of the sealing material. Neither cuttings from the drilling process nor drilling fluid shall be used as bore hole sealing material.

(iii) Slurry mixes of bentonite grout shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout per WAC 173-160-221 (1)(a). The tremie pipe will extend the full depth of the bore hole before pumping begins. Minimum slurry volume used must be equal to or exceed the calculated annulus volume of the bore hole. Grouting material shall surround all pipes remaining in the bore hole to land surface.

(g) Grouting of a permanently cased bore hole. Grouting of cased bore holes shall be sealed in accordance with this chapter.

**Exception:** When the casing is perforated from bottom to land surface and is pressure grouted in accordance with WAC 173-160-381 (1)(a).

(h) Unsuccessful installation of a ground source heat pump boring. If grouting is not successful, the department must preapprove an alternate completion of the ground source heat pump boring. If an alternate completion is not approved, the well must be properly decommissioned.

(i) An open-loop system must meet the construction standards of a water well. If the withdrawal of ground water exceeds the exemption requirements of RCW 90.44.050, a water right permit is required.

(j) It shall be the responsibility of the driller to properly construct the bore hole, pressure test the loop pipe, install the loop pipe, and grout the bore hole.

## NEW SECTION

**WAC 173-160-456 What are the minimum standards for construction of grounding wells?** (1) General requirements. Grounding wells (cathodic protection wells or anode wells – These wells must be constructed in accordance with the provisions of Part One—General Requirements for Water Well Construction, chapter 173-160 WAC.

(2) Grounding wells shall be designed by an engineer, licensed in Washington state, trained in the design of corrosion protection wells.

(3) The internal materials used and size of element installed shall meet all industry standards for cathodic protection and anode wells.

(4) Grounding wells shall not pollute the waters of the state.

(5) If constructed within one hundred feet of a potential source of contamination, sealing is required to a minimum depth of fifty feet or the first significant confining layer, whichever is deeper, in accordance with WAC 173-160-241.

(6) Where the well construction regulations cannot be met, a variance may be requested.

(7) Grounding wells twenty-five feet in depth or less are exempt from these regulations, however, commingling of aquifers is still prohibited.

(8) Driven grounding rods installed to a depth of twenty-five feet or less are exempt from these regulations.

## AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

**WAC 173-160-460 What is the decommissioning process for resource protection wells?** (1) Resource protection wells and geotech soil borings that were not constructed in accordance with these regulations, or for which a drilling report required under this section is missing, shall be decommissioned in one of the following ways:

(a) Perforate the casing from the bottom to land surface and pressure grout the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. Each cut shall be at least one and one-half inches long.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The remainder of the casing shall be filled with cement grout, neat cement, or bentonite slurry((-)); or

(b) Withdraw the casing and fill the bore hole with cement grout, neat cement, or bentonite as the casing is being withdrawn.

(2) ((If it can be)) Wells with an inside casing diameter equal to or greater than one inch and constructed in accordance with these regulations as verified through a field examination and review of the drilling report ((that the resource protection well was constructed in accordance with these regulations, it))) shall be decommissioned by((-:

((a))) filling the casing from bottom to land surface with bentonite, cement grout, or neat cement((-); and

((b) Placing a cap on the casing)).

(3) Wells with an inside casing diameter less than one inch shall be decommissioned by pressure grouting the entire casing length.

(4) Vibrating wire piezometers installed per WAC 173-160-450 are exempt from these decommissioning procedures.

(5) Direct push wells shall be decommissioned in accordance with this section.

(6) Geotechnical soil borings, or boring, shall be decommissioned by sealing from bottom to land surface with bentonite, bentonite slurry, cement grout, or neat cement. Sealing material placed below the static water level shall be piped

directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. If cement, neat cement grout, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place grout, the discharge end of the tremie tube shall be submerged in the grout to avoid breaking the seal while filling the annular space. Provided the material does not dilute or segregate and the resulting seal is free of voids, sealing material may be hand poured above the static water level.

**WSR 06-23-127  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed November 21, 2006, 11:28 a.m., effective January 1, 2007]

Effective Date of Rule: January 1, 2007.

Purpose: To comply with the safe patient handling law, chapter 165, Laws of 2006 (ESHB 1672) the department is proposing to revise one existing hospital classification; create two new classifications for acute care hospitals, one for hospitals with a fully implemented safe patient handling program and one for hospitals without a fully implemented safe patient handling program and one for hospitals without a fully implemented safe patient handling program; to amend four state government personnel classifications regarding patient handling and to amend the special reporting instructions as they apply to safe patient handling.

New classifications created to become effective January 1, 2007:

WAC 296-17-68640 Classification 6120.

6120-00 Acute care hospitals - with a fully implemented safe patient handling program.

WAC 296-17-68641 Classification 6121.

6121-00 Acute care hospitals - without a fully implemented safe patient handling program.

WAC 296-17-76240 Classification 7200.

7200-00 State government - mental health or acute care hospitals with a fully implemented safe patient handling program, patient or healthcare personnel.

WAC 296-17-780 Classification 7400.

7400-00 State government - mental health or acute care hospitals without a fully implemented safe patient handling program, patient or healthcare personnel.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-35203, 296-17-651, 296-17-67603, 296-17-67901, 296-17-682, and 296-17-763.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Adopted under notice filed as WSR 06-18-080 on September 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 21, 2006.

Judy Schurke  
Acting Director

**AMENDATORY SECTION** (Amending WSR 05-23-161, filed 11/22/05, effective 1/1/06)

**WAC 296-17-35203 Special reporting instruction.** (1) **Professional and semiprofessional athletic teams.** Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(((5))) (6).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in

this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the depart-

ment estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so

specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year

period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and cancelled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a land-owner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a land-owner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site

(www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries  
Reforestation Team 8  
P.O. Box 44168  
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

**(5) Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17-66003.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mecha-

nized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

**(6) Special drywall industry rule.**

**(a) What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

**(b) I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owners hours} \div (\text{owners hours} + \text{workers hours}) = \\ \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted} \\ \text{footage, if any}) = \text{Total owner deduction of footage.}$$

**(c) Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

**(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

**(e) Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted

classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

**(f) If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

**(7) Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

**(a) Definitions.** For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services

Program, Department of Labor and Industries, P.O. Box 44161, Olympia, Washington, 98504.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

**WAC 296-17-651 Classification 4902.**

**4902-00 State government clerical and administrative office personnel**

Applies to state employees who are assigned to work in an office environment in a clerical or administrative capacity, with no field duties. The work performed in this classification normally includes working with telephones, correspondence, creating financial, employment, personnel or payroll records, research, composing informational material at a computer, creating or maintaining computer software, or library work, but may include other administrative work performed in an office location. For the purpose of this classification, employees reported in 4902 would have no field work or routine travel outside of the office, other than occasional errands, a trip to the bank or post office, attendance at training, meetings or a conference in support of their normal duties. This classification may include, but is not limited to, jobs such as office support, secretary, administrative assistant, customer service representative, accountant, fiscal analyst, information systems, when normal job duties do not require travel and are completed in an office environment.

This classification excludes: Employees whose duties include field exposure, employees who may be called upon to restrain individuals or participate in recreational activities in state hospitals, schools, homes, detention or correctional facilities, who are to be reported separately in the appropriate classification (5307, 7103, or 7201); administrative field employees who are to be reported separately in risk classification 5300; law enforcement officers in any capacity who are to be reported separately in risk classification 7103; ~~((or)) employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200; employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported separately in classification 7400;~~ employees who provide patient or health care and work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified who are to be reported separately in risk classification 7201. Volunteers are to be reported in classification 6901, and law enforcement volunteers in classification 6906.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

**Special notes:** A division of hours is not permitted between classification 4902 and any other classification. For purposes of this classification the term "clerical and administrative office personnel" shall have the same meaning as "clerical office employees" defined in the standard exception provision of the general reporting rule.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

**WAC 296-17-67603 Classification 5300.**

**5300-00 State government - administrative field personnel**

Applies to state employees whose duties require them to travel to an alternative work location but their work assignment is administrative in nature. Workers reported in this classification have duties which routinely involve travel to meetings or appointments with clients, customers, or businesses. Typical work includes, but is not limited to, field auditor, collector, social worker, attorney, public relations or consulting staff with no hazardous exposures. Supervisors who occasionally travel to accompany field staff for purposes such as observation or information gathering, but who do not typically perform any work other than administrative, are also included in this classification. Employees in this classification may also have follow-up work that is completed in the office such as writing reports, correspondence, etc.

This classification excludes employees with duties outside of the office which are more than administrative in nature such as, but not limited to, engineers, inspectors, and biologists who may have some field exposure, and are to be reported in 5307. For purposes of this classification, field exposure is defined as any work period, other than the normal travel to or from a work environment, which involves "hands on" work.

This classification excludes: Employees whose duties include field or hazardous exposure, employees who perform work with inmates, residents, patients or potentially violent persons in state hospitals, schools, homes, detention or correctional facilities which may involve security, recreation, or staff who may be called upon to restrain individuals, who are to be reported separately in the appropriate classification (5307, 7103, 7201); clerical and administrative office personnel who are to be reported separately in classification 4902; law enforcement officers in any capacity who are to be reported separately in classification 7103; ~~((or)) employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200; employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported separately in classification 7400;~~ employees who provide patient or health care and work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified who are to be reported separately in classification 7201. Volunteers are to be reported in classification 6901, and law enforcement volunteers in classification 6906.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

**Special notes:** A division of hours is not permitted between classification 5300 and any other classification.

For purposes of this classification, the term "administrative field personnel" shall have the same meaning as "sales

personnel" defined in the standard exception provision of the general reporting rule.

**AMENDATORY SECTION** (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

**WAC 296-17-67901 Classification 5307.**

**5307-00 State government employees - N.O.C.**

Applies to state government employees not covered by another classification (N.O.C. - not otherwise classified). This is the basic state agency classification which covers employees who have duties that support the mission of the agency and have field or hazardous exposure. For purposes of this classification field or hazardous exposure is defined as any work which involves "hands on" work. Employees reported in this classification may have jobs that include, but are not limited to, performing manual labor or supervising a work crew performing manual labor, work in the trades, construction-type work or maintenance/repair work, operating machinery or equipment, stores/stock clerks, warehouse, supplies, deliveries, food services, facilities, recreational, or general security staff with no law enforcement duties. This classification also includes, but is not limited to, personnel such as engineers, inspectors, and biologists, who have field exposure. This classification includes supervisors who work at a field site and routinely perform supervision duties in the field. This classification includes nonpatient care employees in state operated homes, schools, detention or correctional facilities not described in another classification.

This classification excludes: Employees who have law enforcement power in any capacity, who are to be reported separately in classification 7103; employees who work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified who provide patient or health care, who are to be reported separately in classification 7201; employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200; employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported in classification 7400; administrative field employees, who are to be reported separately in classification 5300; and clerical and administrative office personnel, who are to be reported separately in classification 4902. Volunteers are to be reported in classification 6901, and law enforcement volunteers in classification 6906.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

**AMENDATORY SECTION** (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

**WAC 296-17-682 Classification 6105.**

**((6105-00 Hospitals: Religious, charitable or nonprofit**

~~Applies to establishments engaged in operating religious, charitable, or nonprofit hospitals. These hospitals are usually corporations who are governed by a board and have an additional uncompensated care program to assess medically necessary situations and seek out any available resources to provide coverage. If no resources are available, the hospital usually provides care anyway because their mission includes addressing need and supplying care. Hospitals provide medical or surgical care and treatment for the sick and the injured. A hospital is an organization with six or more beds providing round the clock nursing care and access to physician's care, and operating at least a pharmacy, a diagnostic X ray and laboratory facility, and a surgical service. Most hospitals offer a variety of medical services. General care or community hospitals offer a wide range of short term treatments for a variety of medical conditions, whereas specialized institutions (such as children's hospitals, maternity hospitals and psychiatric hospitals) usually provide a more limited range of services to a specific class of patients. This classification contemplates all types of hospital employment including, but not limited to, admissions staff, medical staff, pharmacy staff, dietary staff, and laundry, housekeeping, custodial and grounds keeping staff. This classification also includes clerical office and sales personnel.~~

**6105-01 Hospitals: Private proprietary**

~~Applies to establishments engaged in operating private proprietary hospitals. These are for profit corporations that have a board and investors. All hospitals are required to provide initial emergency care. A proprietary hospital may recommend that an indigent or uninsured person find follow up care elsewhere. Hospitals provide medical or surgical care and treatment for the sick and the injured. A hospital is an organization with six or more beds providing round the clock nursing care and access to physician's care, and operating at least a pharmacy, a diagnostic X ray and laboratory facility, and a surgical service. Most hospitals offer a variety of medical services. General care or community hospitals offer a wide range of short term treatments for a variety of medical conditions, whereas specialized institution (such as children's hospitals, maternity hospitals and psychiatric hospitals) usually provide a more limited range of services to a specific class of patients. This classification contemplates all types of hospital employment including, but not limited to, admissions staff, medical staff, pharmacy staff, dietary staff, and laundry, housekeeping, custodial and grounds keeping staff. This classification also includes clerical office and sales personnel.)~~

**6105-05 Hospitals: N.O.C. - ((including hospital districts)) (to be assigned only by the hospital underwriter)**

~~Applies to establishments engaged in operating hospitals which are not covered by another classification (N.O.C.) ((including hospital districts. They are governed by a board of community members. A municipal hospital district operates similar to a charitable hospital; they will not turn away anyone in need of care, but must exercise discretion in allowing write-offs for charity cases. They will also make every effort to obtain available resources for a person before recognizing them as indigent. Hospitals provide medical or surgical care and treatment for the sick and the injured. A hospital~~

~~is an organization with six or more beds providing round-the-clock nursing care and access to physician's care, and operating at least a pharmacy, a diagnostic X-ray and laboratory facility, and a surgical service. Most hospitals offer a variety of medical services. General care or community hospitals offer a wide range of short term treatments for a variety of medical conditions, whereas specialized institutions (such as children's hospitals, maternity hospitals, and psychiatric hospitals) usually provide a more limited range of services to a specific class of patients. This classification contemplates all types of hospital employment including but not limited to admissions staff, medical staff, pharmacy staff, dietary staff, and laundry, housekeeping, custodial and grounds keeping staff. This classification also includes clerical office and sales personnel)) and that do not have routine patient lifting and moving hazard. Types of hospitals covered by this classification include, but are not limited to, alcohol and chemical dependency, physical rehabilitation, and private psychiatric. This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry, housekeeping, custodial and grounds keeping staff.~~

This classification excludes acute care hospitals as defined in WAC 296-17-35203(7).

#### NEW SECTION

#### **WAC 296-17-68640 Classification 6120.**

##### **6120-00 Acute care hospitals - with a fully implemented safe patient handling program (to be assigned only by the hospital underwriter)**

Applies to establishments that meet the definition of an acute care hospital contained in WAC 296-17-35203(7) that are using the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry housekeeping, custodial and grounds keeping staff.

#### NEW SECTION

#### **WAC 296-17-68641 Classification 6121.**

##### **6121-00 Acute care hospitals - without a fully implemented safe patient handling program (to be assigned only by the hospital underwriter)**

Applies to establishments that meet the definition of an acute care hospital contained in WAC 296-17-35203(7) but that are not using the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical, and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry, housekeeping, custodial and grounds keeping staff.

#### NEW SECTION

#### **WAC 296-17-76240 Classification 7200.**

##### **7200-00 State government - mental health or acute care hospitals with a fully implemented safe patient handling program, patient or health care personnel (to be assigned only by the hospital underwriter)**

Applies to state employees who provide any type of patient or health care at state-operated mental health or acute care hospitals that are equipped with the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). All employees who have responsibility for mental health care or medical care of patients in these facilities are included in this classification.

This classification excludes: Patient or health care personnel working at a mental health or acute care hospital that does not have a fully implemented safe patient handling program who are to be reported separately in classification 7400; patient or health care personnel at health care facilities that do not operate as a mental health or acute care hospital who are to be reported separately in classification 7201; employees who work in state hospitals, schools, or prisons who do not work directly in patient care such as food service, laundry, and janitorial, who are to be reported separately in classification 5307; administrative field employees who are to be reported separately in classification 5300; clerical and administrative office personnel who are to be reported separately in classification 4902; law enforcement officers who are to be reported separately in classification 7103; volunteers who are to be reported separately in classification 6901; and law enforcement volunteers who are to be reported separately in classification 6906.

#### AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

#### **WAC 296-17-763 Classification 7201.**

##### **7201-00 State government - patient or health care personnel, N.O.C. (to be assigned only by the hospital underwriter)**

Applies to state employees who are not otherwise classified who provide any type of patient or health care at state-operated hospitals, schools, homes, camps, detention or correctional facilities, that are not operated as mental health or acute care hospitals as defined in WAC 296-17-35203(7) and that do not have routine patient lifting and moving exposure. All employees who have responsibility for physical or mental health care of patients in these facilities are included in this classification. Types of employment contemplated by this classification include, but are not limited to, doctors, nurses, therapists, attendants, or training and counseling staff who work with patients and may be called upon to restrain or attend to patients who are potentially aggressive or violent.

This classification excludes: Employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported separately in classification 7200; employees who provide patient or health care at state-operated mental health or acute care hospitals that do not

have a fully implemented safe patient handling program who are to be reported separately in classification 7400; law enforcement officers in any capacity who are to be separately reported in classification 7103; employees who work in state hospitals, schools or prisons, who do not work directly in patient care such as food service, laundry, and janitorial, who are to be separately reported in classification 5307; administrative field employees who are to be separately reported in classification 5300; or clerical and administrative office personnel who are to be separately reported in classification 4902. Volunteers are to be reported in classification 6901, and law enforcement volunteers in classification 6906.

#### NEW SECTION

##### **WAC 296-17-780 Classification 7400.**

##### **7400-00 State government - mental health or acute care hospitals without a fully implemented safe patient handling program - patient or health care personnel (to be assigned only by the hospital underwriter)**

Applies to state employees who provide any type of patient or health care at state-operated mental health or acute care hospitals that are not equipped with the required patient lifting and moving equipment as a part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). All employees who have responsibility for mental health care or medical care of patients in these facilities are included in this classification.

This classification excludes: Patient or health care personnel working at a mental health or acute care hospital that has a fully implemented safe patient handling program who are to be reported separately in classification 7200; patient or health care personnel at health care facilities that do not operate as a mental health or acute care hospital who are to be reported separately in classification 7201; employees who work in state hospitals, schools or prisons who do not work directly in patient care such as food service, laundry, and janitorial staff who are to be reported separately in classification 5307; administrative field employees who are to be reported separately in classification 5300; clerical and administrative office personnel who are to be reported separately in classification 4902; law enforcement officers who are to be reported separately in classification 7103; volunteers who are to be reported separately in classification 6901; and law enforcement volunteers who are to be reported separately in classification 6906.

#### **WSR 06-23-137 PERMANENT RULES DEPARTMENT OF FINANCIAL INSTITUTIONS**

[Filed November 21, 2006, 2:45 p.m., effective January 1, 2007]

**Effective Date of Rule:** January 1, 2007.

**Purpose:** The proposed rules repeal the existing rules in their entirety. The proposed rules implement EHB 2340 (chapter 19, Laws of 2006).

**Citation of Existing Rules Affected by this Order:** The following rules are repealed in their entirety: WAC 208-660-

010 Definitions, 208-660-020 Statutory exemptions, 208-660-025 Computer loan information services and systems, 208-660-030 Application procedure for mortgage broker license, 208-660-035 Interim licenses, 208-660-040 Experience requirements, 208-660-042 Continuing education requirement, 208-660-045 Approval of courses and examinations, 208-660-050 Demand for criminal history information, 208-660-060 Department's fees and assessments, 208-660-061 Fee increase, 208-660-062 Waiver of fees, 208-660-070 Branch office application procedure, 208-660-080 Surety bond and approved alternatives—General requirements, 208-660-08005 Alternatives to the surety bond, 208-660-08010 Establishment of trust account for borrower funds to pay third-party providers, 208-660-08015 Designation of trust account(s), 208-660-08020 Required trust account records and procedures, 208-660-08025 Trust account deposit requirements, 208-660-08030 Trust account disbursement requirements, 208-660-08032 Approved methods of disbursement to and from trust accounts, 208-660-08035 Computerized accounting system requirements, 208-660-08040 Automated check writing systems, 208-660-085 Alternatives to the surety bond, 208-660-090 License standards for applicants licensed in other jurisdictions, 208-660-09005 Registered agent and agent's office, 208-660-09010 Change of registered agent or agent's office, 208-660-09015 Resignation of registered agent, 208-660-09020 Service on licensee, 208-660-100 License standards for associations, 208-660-110 Transfers by, or changes in principal or designated broker of, a licensee, 208-660-120 Employees and independent contractors of licensees, 208-660-125 Recordkeeping and other requirements for advertising materials, 208-660-130 Disclosure required to borrower, 208-660-140 General recordkeeping requirements, 208-660-145 Forwarding appraisal, title report and credit report, 208-660-150 Disclosure of significant developments, 208-660-160 License application denial or condition; license suspension or revocation, 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act, 208-660-170 Transitional rule, 208-660-190 Prohibited practices—Improperly influencing appraisals, 208-660-200 Mortgage broker fees allowed, and 208-660-210 Mortgage brokerage commission.

**Statutory Authority for Adoption:** RCW 43.320.040, 19.146.223, chapter 19, Laws of 2006.

**Adopted under notice filed as WSR 06-18-067 on October 4 [September 5], 2006.**

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 31, Amended 0, Repealed 13.

**Number of Sections Adopted at Request of a Nongovernmental Entity:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted on the Agency's Own Initiative:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures:** New 31, Amended 0, Repealed 13.

**Number of Sections Adopted Using Negotiated Rule Making:** New 31, Amended 0, Repealed 13; **Pilot Rule**

Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 21, 2006.

Deborah Bortner  
Acting Director  
Division of Consumer Services

#### NEW SECTION

**WAC 208-660-005 Purpose, scope and coverage. (1)**

**What is the purpose of the Mortgage Broker Practices Act?** The purpose of the Mortgage Broker Practices Act is to establish a state system of licensure and rules of practice and conduct for mortgage brokers and loan originators, to promote honesty and fair dealing with citizens, and to preserve public confidence in the lending and real estate community.

**(2) What is the purpose of the Mortgage Broker Practices Act rules?** The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators, and other persons subject to the act.

**(3) What is the scope and coverage of the Mortgage Broker Practices Act and these rules?** There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria are:

- (a) The persons or entities conducting business;
- (b) The type of transactions performed when conducting the business;
- (c) The identification of residential real estate; and
- (d) The location of the mortgage broker, loan originator, potential borrower, and residential real estate.

**(4) What persons or entities are covered?** The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers under RCW 19.146.010(12), or loan originators under RCW 19.146.010(10). However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in WAC 208-660-008.

**(5) What types of transactions are covered?** The Mortgage Broker Practices Act and these rules cover the making or assisting in obtaining of any "residential mortgage loan" defined in RCW 19.146.010(15) and WAC 208-660-006. The terms "making" and "assisting" are defined under "mortgage broker" in WAC 208-660-006. Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

**(6) What is residential real estate?** Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling, or multiple family dwelling of four or less units. See examples in WAC 208-660-006, "residential real estate."

**(7) Does the location of the mortgage broker, loan originator, potential borrower, and residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?** If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules. However, the

director may choose to defer to other jurisdictions where doing so would, in the director's sole discretion, achieve the purposes of the Mortgage Broker Practices Act.

**(8) What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?**

(a) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(a)(i). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(b) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(a)(ii). The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(c) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(a)(ii). The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

#### NEW SECTION

**WAC 208-660-006 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the submission, whether written or computer-generated, of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

For a refinance or purchase application that is not a prequalification, the credit report may be enough to constitute an application. The credit report date determines when the mortgage broker, or loan originator on behalf of the mortgage

broker, has gathered sufficient information to make a credit decision. This may be a trigger for early disclosures when the property address is known.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to con-

sumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on line 802 of the good faith estimate and settlement statement as a percentage of the loan amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules

to determine whether the licensee is in compliance with applicable laws and regulations.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act" means the Gramm-Leach-Bliley Act (GLBA), at 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;

- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or

means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

- Is the person guaranteed a regular wage?

- Is the person reimbursed for business expenses?

- Does the person maintain a separate business?

- Is the person exposed to potential profits and losses?

- Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

- "Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or

- A loan originator licensed by the director; or

- Any person subject to licensing under RCW 19.146.200; or

- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

"Loan application" means the same as "application," in this section.

"Loan originator" means a natural person who:

- Takes a residential mortgage loan application for a mortgage broker; or

- Offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under

RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain:

- Makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan; or
- Holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

For purposes of this definition, a person "makes" a loan if: The loan is closed in their name, or they advance, offer to advance or make a commitment to advance funds to a borrower for a loan.

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Sec. 3500.2(b).

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a part-

nership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

- A single family home;
- A duplex;
- A triplex;
- A fourplex;
- A single condominium in a condominium complex;
- A single unit within a cooperative;
- A manufactured home when the home and real property together will secure the residential mortgage loan; or
- A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

- An apartment building or dwelling of five or more units;
- A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or
- Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

#### NEW SECTION

**WAC 208-660-007 Good standing.** (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or

other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director.

(b) Whether the licensee has filed their mortgage broker annual report.

(c) Whether the licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years.

(g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

**(2) Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage**

**broker?** The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020(4).

**(3) When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** The department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section.

**(4) What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination.

**(5) What department determinations may be challenged through a brief adjudicative proceeding?** Subsection (1)(a) through (l) of this section may be challenged through a brief adjudicative process.

**(6) What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings?** The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings requested by an applicant or licensee, or conducted at the director's discretion.

**(7) Who conducts the brief adjudicative proceeding?** Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's determination of good standing, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

**(8) When and how will the presiding officer issue a decision?** Within ten business days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.

## NEW SECTION

**WAC 208-660-008 Exemption from licensing.** **(1) If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

- (a) Take a residential mortgage loan application for a mortgage broker;
- (b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;
- (c) Make a residential mortgage loan, or assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or
- (d) Hold yourself out as being able to perform any of the above services.

**(2) Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

**(3) If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?** If you are licensed under the Consumer Loan Act, any loans covered by that act are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

**(4) If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?** You are not required to have a license, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

**(5) If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the act?** Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your independent contractor loan originators are not exempt under this section.

**(6) Am I exempt from the Mortgage Broker Practices Act if I make or acquire residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans?** You are exempt from the licensing requirements, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections

include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

For purposes of this section, intent to resell residential mortgage loans is determined by your ability and willingness to hold the residential mortgage loans, indicated by, but not limited to, such measures as whether you have sold loans in the past, whether the loans conform to established secondary market standards for the sale of loans, and whether your financial condition would reasonably allow you to hold the residential mortgage loans.

**(7) If I am an exempt mortgage broker because I am making or acquiring residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans, are my loan originators subject to licensing or any other sections of the act?** Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your independent contractor loan originators are not exempt under this section.

**(8) As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with obtaining a residential mortgage loan on the property.

**(9) As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(g) if you only receive the customary real

estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

**(10) Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?**

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

**(11) What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act?** The owners of companies exempt from licensing under RCW 19.146.020 (1)(e), (g), or (4), are responsible for:

- (a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

- (b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

- (c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

**(12) Are the independent contractors of a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt?** No. After January 1, 2007, an independent contractor working as a loan originator for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) must hold a loan originator license.

**(13) What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (b).

**(14) When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), (e), (g), or (h); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

- (i) A separate fee for the CLI service; or

- (ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

- (c) When a person, acting as a CLI provider:

- (i) Provides only information regarding rates, terms, and lenders;

- (ii) Complies with all requirements of subsection (16) of this section;

- (iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

- (iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

- (v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

- (vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

- (vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive

any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

**(15) When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

**(16) Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

**(17) Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

## MORTGAGE BROKERS

### NEW SECTION

**WAC 208-660-155 Mortgage brokers—General.** (1) **May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time one loan" exception.

(2) **May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person.

(3) **As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(4) **Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

(5) **Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower?** The mortgage broker may charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by the borrower and the mortgage broker.

(6) **Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered when the loan does not close at all, or does not close on the terms and conditions agreed upon by the borrower and the mortgage broker?** A mortgage broker may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dol-

lars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) The mortgage broker has obtained a written commitment from a lender on the same terms and conditions agreed upon by the borrower and the mortgage broker; and

(b) The borrower fails to close on a loan through no fault of the mortgage broker; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

**(7) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

**(8) What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

**(9) What action must a mortgage broker take to activate a loan originator license?** To activate a loan originator license, the licensed mortgage broker must confirm with the department that the loan originator will be working for the licensed mortgage broker.

**(10) What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must notify the department it is terminating the working relationship with the loan originator.

## NEW SECTION

### **WAC 208-660-163 Mortgage brokers—Licensing.**

#### **(1) How do I apply for a mortgage broker license?**

**(a) Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

**(b) Submit an application.** You must fill out an application in a form prescribed by the director. Submit the application with the appropriate attachments to the department for review.

**(c) Pay the application and license fees.** You will have to pay an application fee to cover the department's cost of processing and reviewing application. You must also pay a

separate annual license fee. See WAC 208-660-550, Department fees and costs.

**(d) Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

**(e) Provide a surety bond.** Mortgage brokers must have a surety bond of twenty to sixty thousand dollars depending on the average number of loan originators representing the mortgage broker. See WAC 208-660-175 (1)(e).

**(2) What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

**(3) Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

**(4) What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(b) Whether the applicant, licensee or other person subject to the act has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years.

(c) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(d) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(e) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(f) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(g) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(h) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary pro-

ceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

**(5) What will happen if my mortgage broker license application is incomplete?** The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.

**(6) How do I withdraw my application for a mortgage broker license?** Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.

**(7) When will the department consider my mortgage broker license application package abandoned?** If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per subsection (1) of this section.

**(8) What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund the license fee and any unused portion of the application fee.

**(9) What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

**(10) May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

**(11) May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

**(12) How do I change information on my mortgage broker license?** You must file a license amendment application with the department, in a form prescribed by the department. You must file the amendment application within thirty days of the change occurring.

**(13) When does a mortgage broker license expire?**

The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

**(14) When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in licensing uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

**(15) May the department issue replacement licenses with an expiration date?** Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.

**(16) How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report, and any other required notices, with the director. See WAC 208-660-400, Reporting requirements.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) Verify the surety bond is adequate for the average number of loan originators, including all locations.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

**(17) If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date, you may renew an expired license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (16) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

**(18) May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any

business under the act that requires a license until you renew your license.

(19) **What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(20) **May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

(21) **Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

#### NEW SECTION

##### **WAC 208-660-175 Mortgage brokers—Surety bond.**

(1) **What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be between twenty thousand dollars and sixty thousand dollars depending on the annual average number of loan originators representing the mortgage broker.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be sufficient to cover the number of licensed loan originators you intend to employ in your first year of business.

(d) The surety bond must list the full name and any trade or doing-business-as names used by the mortgage broker. The surety bond must list the licensee's main physical address including street number, street name and direction, suite number, city, county, and state.

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual average number of loan originators:

Average Number of Loan Originators	Minimum Required Bond Amount
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

(2) **May I provide security in a form other than a surety bond?** No. Beginning January 1, 2007, the director will not accept an alternative to a surety bond.

(3) **Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

(4) **What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond. Then include the surety bond and the attached power-of-attorney with your license application package.

(5) **What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

(6) **May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

(7) **Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by the licensee, its employees, or independent contractors.

(8) **Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

(9) **How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

(10) **How may I make a claim against a certificate of deposit, an irrevocable letter of credit, or other instrument that the director has permitted to be filed instead of a surety bond?** File your claim against a certificate of deposit, an irrevocable letter of credit, or other instrument directly with the department, in a form prescribed by the department. After January 1, 2007, the department will only accept surety bonds; any claims arising over violations occurring after January 1, 2007, will be against a bond.

(11) **How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

(12) **When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

NEW SECTION**WAC 208-660-180 Mortgage brokers—Main office.**

**(1) Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

**(2) How many designated brokers may a mortgage broker have?** The mortgage broker must have a qualified designated broker at all times. The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

**(3) If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

**(4) What must I do to replace my designated broker?** You must apply, in a form prescribed by the department, for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1) and the new designated broker and the licensee including those individuals to whom the license was granted, must meet the good standing requirements of WAC 208-660-007.

**(5) What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

**(6) After my mortgage broker license is approved, may I change my business structure?** Yes. You must follow the notification requirements of WAC 208-660-400(12).

**(7) May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

**(8) If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

**(9) May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

**(10) May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

NEW SECTION**WAC 208-660-195 Mortgage brokers—Branch offices.** **(1) May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

**(2) If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

**(3) How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply to the department for a branch office license and receive a branch office license before operating from any location other than your licensed location. The application for a mortgage broker branch office license must be in a form prescribed by the director. The licensed mortgage broker must be in good standing, and may need to increase the amount of the surety bond. You will have to pay application and annual assessment fees. See WAC 208-660-550, Department fees and costs.

**(4) What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.

(c) Whether the physical address listed in the application can be verified as a branch office location.

**(5) Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

**(6) If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

**(7) How do I change information on my mortgage broker branch office license?** You must file a license amendment application with the department, in a form prescribed by the department. You must file the application within thirty days of the change occurring.

**(8) Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

**(9) How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must:

(i) Verify the surety bond is adequate for the licensee's average number of loan originators.

(ii) Pay the branch office annual assessment fee.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

**(10) If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (9) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

**(11) If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

**(12) If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

**(13) May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

**(14) How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

**(15) Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or

residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

**(16) Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. The licensee and designated broker are responsible for the business conducted at all locations.

**(17) Must I have a designated broker at each branch?** No. The licensed mortgage broker may have only one designated broker who is responsible for the mortgage broker business at all locations.

## DESIGNATED BROKERS

### NEW SECTION

**WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?**

(a) You must pass the designated broker test. See WAC 208-660-260, Designated brokers—Testing.

(b) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department.

(c) You must have a minimum of two years' experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee for a licensed or exempt residential mortgage company.

(d) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department.

**(2) May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

**(3) Must the designated broker also hold a loan originator's license?** A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.

**(4) May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must apply to the department for an additional loan originator license.

**(5) May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

**(6) As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

#### NEW SECTION

**WAC 208-660-260 Designated brokers—Testing. (1) Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass a test prior to becoming a designated broker.

**(2) After passing the designated broker test, will I have to take it again?** You must retake the designated broker test if you have not been approved by the department and have not worked as a designated broker within the past five years.

**(3) After passing the designated broker test, will I have to take the loan originator test to get a loan originator license?** If you passed the designated broker test, and have worked as an approved designated broker in the past five years, you will be given a loan originator license without taking the loan originator test.

**(4) Where can I get information about the designated broker test?** The department will publish the names and contact information of approved testing providers on the department web site.

**(5) What topics may be covered in the designated broker test?** The department will publish a list of designated broker test topics on the department's web site.

**(6) How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

#### NEW SECTION

**WAC 208-660-270 Designated brokers—Continuing education. (1) Where can I get information about continuing education?** The department will publish a list of approved courses and approved professional organizations offering courses of education. The course providers and pro-

fessional organizations will have detailed information about the continuing education courses they offer.

**(2) As a designated broker, how many clock hours of continuing education must I have?** The continuing education requirement for designated brokers will be in the form of approved courses. While the individual clock hours may vary, you must complete three courses, of no less than three hours each, annually. You may receive credit for one course by attending three mortgage broker commission meetings.

**(3) As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

**(4) If I teach an approved continuing education course may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

**(5) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license and seek to get credit for continuing education, submit your approved continuing education course material for the course(s) you taught during the year. The department will credit you with completing two continuing education courses for each one approved course you teach.

**(6) Is ethics a required continuing education course for designated brokers?** Yes. You must take an ethics continuing education course in your first year of acting as a designated broker. However, if you teach an approved continuing education course on ethics during your first year working as a designated broker, teaching that course will satisfy your ethics continuing education requirement.

**(7) As a designated broker, if I take a continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?** If any state has continuing education requirements or standards at least as stringent as Washington's, that state's notification of satisfactory completion of continuing education may be approved by the department as meeting the continuing education requirements under the act and these rules.

**(8) If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

**(9) How do I provide the department with proof of the continuing education courses I have completed?** You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

**(10) If I fail to complete the required continuing education, what happens to my license?** When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-

660-350(20) to renew your license within forty-five days of it expiring.

**(11) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the old annual assessment date?** Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.

## LOAN ORIGINATORS

### NEW SECTION

**WAC 208-660-300 Loan originators—General.** (1) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

**(2) May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

**(3) May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

**(4) As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

**(5) May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

**(6) May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

**(7) May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker you are affiliated with who is licensed under Washington law.

**(8) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

**(9) Do loan processors have to be licensed as loan originators?** No. Loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. However, a loan processor may not work as an independent contractor unless licensed as a mortgage broker, mortgage broker branch office, or loan originator.

### NEW SECTION

**WAC 208-660-350 Loan originators—Licensing.** (1) **How do I apply for a loan originator license?**

**(a) Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators—Testing.

**(b) Submit an application.** The application form will be prescribed by the director.

**(c) Prove your identity.** You must provide information to prove your identity.

**(d) Pay the application fee.** You must pay an application fee to cover the department's cost of processing and reviewing applications. See WAC 208-660-550, Department fees and costs.

**(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(3) **May I originate residential mortgage loans in Washington without a loan originator license?** Persons conducting the business of a loan originator without an active loan originator license must fall under one of the following categories of exemption from loan originator licensing:

(a) Persons conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(a)(i); or

(b) The exclusive agents conducting residential mortgage loan business for any exempt person under RCW 19.146.020 (1)(a)(ii); or

(c) The bona fide employees conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(b), (e), (g) or (h); or

(d) Those persons exempt under RCW 19.146.020 (1)(c) or (d).

(4) **What will happen if my loan originator license application is incomplete?** The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You may then resubmit the application package.

(5) **How do I withdraw my application for a loan originator license?** Provide the department with a written request to withdraw your application in a form prescribed by the director.

(6) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package.

**(7) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** The department will notify you if your application is denied. You will receive a refund of any unused portion of the application fee.

If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.

Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request an administrative hearing on the denial. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.

**(8) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

**(9) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(10) How do I change information on my loan originator license?** You must file a license amendment application with the department, in a form prescribed by the department within thirty days of the change occurring.

**(11) If I am employed by a bank or other exempt entity may I apply for and receive a loan originator license?** Yes, you may apply for a license at any time. However, if you are not working for a licensed mortgage broker, your license will be considered inactive.

**(12) What is an inactive loan originator's license?** If an individual holds a loan originator license but is not working with a licensed mortgage broker, they hold an inactive license. A person holding an inactive license may not hold themselves out as a licensed loan originator.

**(13) When my loan originator's license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

**(14) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(15) May I originate loans from a web site when my license is inactive?** You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive, except as allowed in subsection (3) of this section.

**(16) How do I activate my loan originator license?** When the department receives a notice, in a form prescribed

by the department, from a licensed mortgage broker establishing a working relationship with you, your loan originator license will become active. The department will notify you and all mortgage brokers you are working with of the new working relationship established by the licensed mortgage broker.

**(17) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

**(18) When does my loan originator license expire?** The loan originator license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

**(19) How do I renew my loan originator license?**

(a) Before the license expiration date you must:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(20) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (19) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

**(21) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator as defined in the act and these rules.

**(22) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

**(23) May I surrender my loan originator's license?** Yes. You may surrender your license before the license expires by notifying the department, in a form prescribed by the department.

Surrender of your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

**(24) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(25) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

**(26) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

**(27) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

## NEW SECTION

### **WAC 208-660-360 Loan originators—Testing.**

**(1) Must I pass a test prior to becoming a loan originator?**

Yes. You must take and pass a test prior to becoming a loan originator.

**(2) Where may I find information about the loan originator test?** The department will publish the names and contact information of approved testing providers on the department web site.

**(3) How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

**(4) How do I register to take the loan originator test?**

The department will publish registration information with the testing provider contact information.

**(5) What topics may be covered in the loan originator test?** The department will publish a list of loan originator test topics on the department's web site.

**(6) After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

**(7) How soon after failing the loan originator test may I take it again?** After failing the test three consecutive times, you must wait at least fourteen days before taking the test again.

#### NEW SECTION

**WAC 208-660-370 Loan originators—Continuing education.** (1) **Where may I get information about continuing education for loan originators?** The department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer.

**(2) How many clock hours of loan originator continuing education must I have each year?** The continuing education requirement will be in the form of approved courses. While the individual clock hours may vary, you must complete two courses, of no less than three hours each, annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course.

**(3) As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

**(4) If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

**(5) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

**(6) Is ethics a required continuing education course for loan originators?** Yes. You must take an ethics continuing education course in your first year of holding a loan originator license. However, if you teach an approved continuing education course on ethics during your first year of holding a loan originator license, that will satisfy your ethics continuing education requirement for that year.

**(7) If I take a loan originator continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?** If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.

**(8) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

**(9) If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within forty-five days of it expiring.

**(10) How will I know which courses and providers satisfy the continuing education requirement?** The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.

**(11) How do I provide the department with proof of the continuing education courses I have completed?** You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

**(12) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date?** Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.

#### NEW SECTION

**WAC 208-660-400 Reporting requirements and notices to the department.** (1) **As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year.

**(2) When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by May 1st of each year beginning in 2007.

**(3) What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

**(4) What action will the department take if I fail to file my mortgage broker annual report by May 1st of each year?**

(a) When the report is over thirty days late, the department may begin an enforcement action against you.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

**(5) How do I notify the department when I want to change information on my mortgage broker or loan originator license?** You must file a license amendment application with the department, in a form prescribed by the department within thirty days of the change occurring.

**(6) As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number?** Yes. Whether your license is active or inactive, you must notify the department in a form prescribed by the department within thirty days of a change in your residential address and telephone number.

**(7) As a designated broker or loan originator must I notify the department if I change my name?** Yes. Whether your license is active or inactive, you must notify the department in a form prescribed by the department within thirty days of a name change.

**(8) Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application. If the location of your books and records changes, you must provide the department, in a form prescribed by the department, with the new physical address within five business days of the change.

**(9) Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, in a form prescribed by the department, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

**(10) When and how do I change the information about my registered agent?** Within five business days of the change, you must file a statement of change with the department, in a form prescribed by the department.

**(11) If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

**(12) Must I notify the department if I change the business structure of my company? When must I notify the department?** If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, in a form prescribed by the department, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable.

**(13) What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale, in a form prescribed by the director.

(b) You must surrender your license and complete the year's annual report.

(c) You must give written notice to borrowers, and to anyone who has applied for a loan, advising them of the change in ownership.

(d) You must give written notice to third party providers advising them of the change in ownership and bringing accounts payable current.

(e) You must maintain your records as required under the act and these rules.

(f) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

**(14) Must I notify the department if I cease doing business in this state?** You must notify the department within twenty days after you cease doing business in the state by filing a Mortgage Broker Closure Form and the annual report.

**(15) Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

**(16) Must I notify the department of changes to my Washington master business license?** Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

**(17) Must I notify the department of changes to my standing with the Washington secretary of state?** Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

**(18) What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.

(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

**(19) If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A

designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

**(20) If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

**(21) If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

**(22) If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

**(23) When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

**(24) When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?** The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application will be denied until the five years have elapsed. For this reason it is important for you to consider a surrender of your license rather than allowing it to be revoked.

**(25) Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

**(26) Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

## NEW SECTION

**WAC 208-660-410 Trust accounting.** **(1) What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited

to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

**(2) Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

**(3) Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

**(4) Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

**(5) Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), (f), (h) are not required to have a trust account even if they receive trust funds. Mortgage brokers exempt under RCW 19.146.020 (1)(e) and (g), and 19.146.020(4) are required to comply with RCW 19.146.050 and these rules.

**(6) What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

**(7) What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds, including, but not limited to bank wires, ACH authorization, credit card or debit transactions, or on-line payments through a web site.

**(8) How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your

trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) **When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

**(10) How must I document deposits?**

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(11) **May I deposit funds other than trust funds into my trust account?** You may advance your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

(12) **May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) **May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account?** Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose.

The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

(14) **May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) **Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(16) **If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds?** Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

(17) **What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

- (i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and
- (ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

**(18) What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

**(19) May I transfer funds between a borrower's subaccounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

**(20) May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

- (i) All third-party provider's charges associated with your deposit have been paid;
- (ii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;
- (iii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and
- (iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

**(21) May I disburse trust funds through electronic transmission?** Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

**(22) How must I handle trust account disbursements?**

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as spec-

ified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

**(23) What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

**(24) What disbursements are prohibited?** Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

**(25) When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn or elec-

tronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

**(26) What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

**(27) What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

**(28) Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

**(29) If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due it to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

**(30) Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

**(31) How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

**(32) If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party**

**providers, may I deposit the check into my business account and pay those third-party providers immediately?** No. You must not deposit those fees into your business account under any circumstances.

**(33) After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

**(34) How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?** When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

**(35) May mortgage brokers using an interest-bearing trust account keep the interest?** No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

**(36) Are there any separate requirements for a computerized accounting system?** Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

(A) Trust account deposit register;

(B) Trust account check register;

(C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

**(37) Are there penalties for violating trust account requirements under RCW 19.146.050?** A violation of this section is a class C felony and may be punishable by impris-

onment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

#### NEW SECTION

**WAC 208-660-420 Out-of-state mortgage brokers and loan originators.** (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must file a statement of change with the department within five business days from the change. The statement of change must contain:

(a) Your name and license number.

(b) If the agent's office location has changed, the new physical address.

(c) If the registered agent has changed, the name and physical address of the new registered agent. The director will send a request directly to the new agent to obtain written consent to the appointment.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

(10) **Where must the director initiate lawsuits arising under the act against out-of-state licensees?** Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston county, Washington.

#### NEW SECTION

**WAC 208-660-430 Disclosure requirements.** (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), and (3). The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

**(4) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A settlement statement or similar document.

**(5) Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

**(6) What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

**(7) Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

**(8) Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

**(9) Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW

19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

**(10) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

**(11) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

**(12) What action may the department take if I disclose my mortgage broker fees on the good faith estimate**

**and HUD-1/1A statement on lines other than 808 through 811?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower. For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated.

**(13) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

**(14) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department will request, direct, or order you to pay restitution to borrowers that have paid fees to you in excess of the amounts initially disclosed.

**(15) How will the department determine whether borrowers have paid fees to me in excess of the amounts initially disclosed for which the department might request, direct or order restitution?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

**(16) If I failed to provide the initial good faith estimate disclosure under RCW 19.146.030 (1) and (2)(b) what action may the department take?** If you have not provided the initial good faith estimate disclosure as required, including both delivery and content requirements, the department may request, direct or order you to pay restitution to the borrower in the amount of all fees that inured to your benefit.

**(17) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

**(18) Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed, prior to closing, to the borrower. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

**(19) Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan?** Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 CFR Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.

**(20) If a loan application is canceled within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

**(21) Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

**(22) What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan?** You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan.

**(23) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-

party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

#### NEW SECTION

**WAC 208-660-440 Advertising.** (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The type size of the APR must be the same size or larger than any other rates stated in the advertisement.

(4) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(5) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give

an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 CFR, part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(6) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(7) **When I advertise, or present a business card to a potential borrower, must I make the disclosures required under the act and these rules?** No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(8) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

#### NEW SECTION

**WAC 208-660-450 Recordkeeping requirements.** (1) **What business books and records must I keep to comply with the act?** The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information;

(iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include

any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; and

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) It may be a prudent business practice to keep your books and records longer than twenty-five months. For example, if a consumer's loan becomes an adjustable rate mortgage after a two-year fixed mortgage rate term, the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a

readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?**

Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a non-rewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

## NEW SECTION

**WAC 208-660-500 Prohibited practices.** (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to

the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly disclose to a borrower whether the payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally or in writing, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising or other deceptive advertising practices.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(4).

(p) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(q) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(r) Advertising a rate of interest without conspicuously disclosing the annual percentage rate implied by the rate of interest.

(s) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(t) Failing to pay third-party providers within the applicable time lines.

(u) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(v) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(w) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

**(4) May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

**(5) What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

**(6) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on lines 808

through 811 of the good faith estimate and HUD-1/1A Settlement Statement or similar document.

**(7) May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

## DIRECTOR AND DEPARTMENT POWERS

### NEW SECTION

**WAC 208-660-510 Director and department powers—Examination authority.** (1) **Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

**(2) When may the department examine my business?** The department may examine your business if you have obtained a mortgage broker main or branch office license within the last five years.

**(3) How many times may the department examine my business in a five-year period?** Your business may be examined once during the first five years of licensing. This applies to the main office and each branch office. However, if violations are found during an examination, the department may conduct additional examinations to follow up with the correction of these violations. The time frame of any additional examination will depend, in part, on the department's assessment of the continuing risk associated with the violations found during the previous examination.

**(4) Will the department give me advance notice of an examination?**

(a) The department will give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

**(5) What are the protocols for an examination of my business?** The examination protocols are detailed in the department's Mortgage Broker Examination Manual. The manual is available on the department's web site.

The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compli-

ance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

**(b) Advance notice.** You will receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

**(c) A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

**(d) The on-site review at your business.** The department examiner will conduct the examination of your business.

**(e) An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

**(f) Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you.

**(g) Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies.

**(h) A possible referral to enforcement.** Any violation of the act or these rules may be referred to enforcement. An enforcement action may result in a suspension or revocation of your license, the imposition of fines, the payment of restitution, or a ban from the mortgage broker industry.

**(6) What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

- (a) Reviewing trust accounting compliance.
- (b) Reviewing loan files.
- (c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.
- (d) Reviewing the business books and records, including employee records.

**(7) When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

(a) When the department finds an apparent violation of trust accounting.

(b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

(c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

**(8) Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection (7) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

**(9) Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination travel costs. See WAC 208-660-550, Department fees and costs.

**(10) May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?**

Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's Mortgage Broker Examination Manual). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

**(11) What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?** The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

**(12) If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department?** When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

**(13) How may the department determine if the independent certified professional's report meets the standards of examination established by the department?** The department will compare the sufficiency of the report submitted by the independent certified professional to the requirements in the department's examination manual. If the report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

**(14) If the independent certified professional's report is missing information, how may the department obtain the missing information?** The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

**(15) What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

**(16) What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

**(17) May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

**(18) Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

**(19) Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

**(20) How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

**(21) What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

#### NEW SECTION

**WAC 208-660-520 Director and department powers—Investigation authority.** **(1) What is an investigation?** An investigation is an inquiry to determine compliance with the act and rules, to assess allegations of wrongdoing, or to evaluate the licensing qualifications of persons subject to the act. The inquiry may involve extensive research, fact gathering, the issuance of directives and subpoenas, witness interviews, and financial and legal analysis. Depending on the results of these efforts, an investigation may result in the pursuit of an enforcement action. An investigation may proceed at the same time as other matters and may continue during an enforcement action.

**(2) How often may the department investigate my mortgage broker or loan originator operations?** For the purpose of investigating violations or complaints, the department may investigate your business as often as necessary to carry out the purpose of the act.

**(3) Will the department give advance notice before requiring me to make my books and records available for its investigation?** The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

**(4) From whom may the department obtain information in an investigation?** The department may obtain information from any person whose testimony may be pertinent to the loans, business, or subject matter of an investigation.

**(5) How may the department obtain information during an investigation?** The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

**(6) What information may the department obtain during an investigation?** The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

**(7) What businesses may the department investigate?** The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

**(8) May the director retain professionals or specialists to assist in an investigation, and if so, will I have to**

**pay for those services?** Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these services will be assessed in accordance with WAC 208-660-550(5), Investigations.

**(9) When may the department charge a mortgage broker or loan originator an investigation fee?** The department may charge an investigation fee when it investigates the books and records of any mortgage broker or loan originator subject to the act.

**(10) Are there circumstances in which the department will investigate a mortgage broker or loan originator but will not charge an investigation fee?** Yes. The department will not charge an investigation fee in a complaint investigation if it is determined that no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

**(11) How is the amount of the investigation fee determined?** The amount of the investigation fee is the number of hours expended by the department related to the investigation multiplied by an hourly rate established by the department. See WAC 208-660-550, Department fees and costs.

#### NEW SECTION

**WAC 208-660-530 Director and department powers—Enforcement authority.** **(1) What is a directive?** A directive is a formal request for information from the director. A directive may request the recipient to appear in person to testify or present specific documents or items. A directive may be entitled "directive" or "subpoena."

**(2) What is an administrative enforcement action?** An administrative enforcement action is a formal action, generally initiated by a statement of charges filed by the department against persons who allegedly violated the act. Enforcement actions seek various sanctions, including, but not limited to, license revocation or suspension, business practice prohibition, or fines; and may include ordering restitution for consumers, recovery of the department's investigation costs, or all of the above.

**(3) What other types of enforcement action may the department pursue against me or my license?** The department may pursue criminal or civil referrals to the attorney general, prosecuting attorneys, or federal authorities, and may initiate civil actions in superior court.

**(4) What does it mean to be found in violation of the act and rules?** For the purposes of evaluating the licensing qualifications of an applicant, any of its principals, or the designated broker, "found in violation of the act and rules" means at least one of the following orders has been issued:

(a) A superior court order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(b) A final administrative order after the completion of an administrative hearing and the filing of an initial decision of an administrative law judge stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(c) An administrative order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules.

The order containing the finding described above must not have been entered within five years of the filing of the present application. However, if the violation resulted in a conviction of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, the finding must not have been entered within seven years of the filing of the present application.

**(5) May the department sanction me for committing violations in another jurisdiction?** The department may seek sanctions against you for committing a violation in another jurisdiction if the violation could be a basis for the department to seek sanctions under the act or rules. Possible sanctions include those found in RCW 19.146.220.

**(6) May I be subject to a daily fine for violating the act?** Yes. Each licensed mortgage broker and each of its principals, officers, designated brokers, loan originators, employees, independent contractors, and agents must comply with the applicable provisions of the act. Each violation of any applicable provision of the act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director may exercise discretion and by order assess other penalties for a violation of the act.

**(7) Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?** A designated broker, principal, or owner with supervisory authority is responsible for any conduct violating the act by a licensee, employee, or independent contractor if they:

(a) Directed or instructed the conduct that was in violation of the act, or had knowledge of the specific conduct, and approved or allowed the conduct; or

(b) Knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in time to prevent it, or minimize the consequences, and did not.

**(8) When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?** The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the factors the department may consider:

(a) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;

(b) The adoption of policies and procedures for:

(i) Supervision and training;

(ii) Regularly reviewing work performed;

(iii) Training in the requirements of the act and rules;

(iv) Monitoring continuing education requirements and compliance under the act;

(v) Acting on reports of alleged misconduct;

(c) Adopting a system of review for implementation and compliance with the policies and procedures;

(d) Providing copies of the act and rules; and

(e) The frequency and completeness of review conducted on work performed by any person subject to the act.

**(9) Do I have the right to have an attorney represent me at an adjudicative hearing and in any superior court proceeding?** Yes. You may have an attorney represent you at your own expense, or you may represent yourself.

**(10) Are there any criminal penalties related to violations of the act?** Yes. Violations of RCW 19.146.050 are class C felonies with a maximum penalty of five years in prison or a fine of ten thousand dollars, or both. Violations of RCW 19.146.235(9) are class B felonies with a maximum penalty of ten years in prison or a fine of twenty thousand dollars, or both. All other violations of the act are misdemeanors with a maximum penalty of ninety days in jail or a fine of not more than one thousand dollars, or both.

**(11) Under the act, is it a crime for any person subject to examination or investigation to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information?** Yes. Knowingly withholding, abstracting, removing, mutilating, destroying, or secreting books, records, computer records, or other information is a class B felony punishable under RCW 9A.20.021 (1)(b).

**(12) Is a mortgage broker responsible for the payment of third-party providers even if the borrower has agreed to pay the fee?** Yes. If a mortgage broker or loan originator orders the third-party provider service, then the mortgage broker is responsible for paying for the service. However, the mortgage broker or loan originator is not responsible for paying the fee if the third-party provider agrees in writing to accept the fee from the borrower.

**(13) When must third-party providers be paid?** Third-party providers must be paid no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner, unless:

(a) The third-party provider agrees in writing to a different payment arrangement; or

(b) The third-party provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party provider service.

**(14) What is a "bona fide" dispute between a mortgage broker and third-party provider?** A dispute related to the performance or quality of the third-party provider service that has been reported in writing to the third-party provider. The report must specify the disputed areas of performance or quality.

**(15) When must a dispute regarding the performance or quality of a third-party provider be reported?** The report of a dispute regarding the performance or quality of the third-party provider service must be made in writing and provided to the third-party provider before the payment for the services becomes due; that is, no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner.

**(16) What is a temporary cease and desist order issued by the department?** A temporary cease and desist order is an administrative enforcement action by the director,

or designee, ordering a mortgage broker or loan originator to stop conducting business, or to stop doing some specific act.

(17) **When does the department use temporary cease and desist orders?** A temporary cease and desist order may be used when the department determines that a mortgage broker or loan originator is violating the act in a manner that is likely to cause substantial injury to the public.

(18) **What happens to my mortgage broker or loan originator license if the department of social and health services (DSHS) certifies me as out of compliance with a support order under RCW 74.20A.320?**

(a) The director will immediately suspend your license without the opportunity for a hearing if the department receives notice from DSHS that you are out of compliance with their support order regulations.

(b) The director will send you a document entitled "Notice of Suspension for Noncompliance with Child Support Order." Your license is suspended from the date of the notice. The suspension of your license remains in effect until the director is notified by DSHS of your compliance with their order. You must not perform any services under the act that require licensing while your license is suspended.

(19) **If the director suspends my license after notice from DSHS that I am not in compliance with a support order, may my license be reinstated?**

(a) The director will reinstate your license when the department has received written notice from DSHS of your compliance, and verified that you meet all licensing requirements under the act.

(b) The department will send you a notice entitled "Notice of Cancellation of Suspension for Noncompliance with Child Support Order." Your license is reinstated from the date of the notice.

(20) **Who may I contact if I have questions about how DSHS determines I am out of compliance with a support order?** Contact DSHS if you have questions about a DSHS certification of your noncompliance with a support order. Reference their case number when you contact them.

#### NEW SECTION

#### **WAC 208-660-540 Director and department powers—General authority.** Reserved.

#### NEW SECTION

**WAC 208-660-550 Department fees and costs.** (1) The department intends to increase its fees and costs each year for several bienniums. The department intends to initiate rule making each biennium for this purpose. This rule provides for an automatic annual increase in the rate of fees and costs each fiscal year during the 2007-2009 biennium.

(a) On July 1, 2007, and July 1, 2008, these fees and costs, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

#### **(2) Mortgage broker licenses.**

Mortgage broker - license application fee	\$370.00
Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	\$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	\$265.00
Mortgage broker branch office - license application fee	\$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	\$530.00
Mortgage broker - license amendment	No fee

#### **(3) Loan originator licenses.**

Loan originator - license application fee	\$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee, per license)	\$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	\$62.50
Loan originator - additional assessment (charged for each association with additional mortgage brokers)	\$75.00
Loan originator - annual assessment (renewal fee of additional licenses)	\$75.00
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment	No fee

When the realignment of license expiration or renewal dates results in a partial year of licensing, the department will impose a proportionate fee structure to accommodate that realignment.

#### **(4) Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination.

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

**(5) Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

(6) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

(7) **How is the annual assessment calculated?** The assessment is a flat rate per license.

(8) **How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

**NEW SECTION**

**WAC 208-660-600 Administration and facilitation of continuing education. (1) Who may offer continuing education courses to principals, designated mortgage brokers, and loan originators?** Continuing education may be offered by:

(a) Course providers with courses of education approved by the director; or

(b) Course providers with courses of education approved by professional organizations approved by the director.

(2) **What does it mean to offer and administer a course of education?** Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval standards in subsections (7) and (13) of this section.

(3) **What is a "course of education" under the act?** A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.

(4) **What is a "course provider" under the act?** A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department for a specific course of education.

(5) **What is a "professional organization" under the act?** A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

**(6) If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?** You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.

**(7) What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations?** Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

(a) The instructor's experience and qualifications;

(b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and

(c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

**(8) If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?** Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

**(9) May the department rescind approval of a course provider's course of education?** Yes. The department may rescind approval of a course of education upon a determination that the course of education does not meet the standards in subsection (7) of this section.

**(10) What action must a course provider take if notified by the department that its course of education has been rescinded?** The course provider must immediately:

(a) Cease advertising or soliciting for the course of education;

(b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and

(c) Refund any fees paid by course takers for the course.

**(11) May a course provider appeal the department's decision to deny or rescind course approval?** Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

**(12) If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section?** Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

**(13) What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules?** The department will review the following:

(a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (20) of this section;

(b) Whether the professional organization has sufficient procedures and guidelines to:

(i) Establish a course(s) of education and approve a course provider(s);

(ii) Audit and evaluate an approved course(s) of education and course provider(s);

(iii) Remove courses and providers from the professional organization's curriculum;

(iv) Provide board reconsideration of denial or removal of a course of education or a course provider;

(v) Ascertain the identity of course of education takers;

(vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;

(vii) Collect, hold, disburse and refund course of education fees;

(c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

**(14) Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education?**

No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

**(15) Is the department liable for a course provider's contractual relationship with a professional organization?** No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

**(16) May the department remove a professional organization's authorization to offer and administer courses of education?** Yes. The department may rescind a professional organization's authorization to offer and administer courses of education upon a determination that the professional organization fails to meet subsection (13) of this section.

**(17) What action must a professional organization take if notified by the department that its authorization has been rescinded?** The professional organization must immediately:

(a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

**(18) May a professional organization appeal the department's decision to deny or rescind authorization?**

Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

**(19) If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection (17) of this section?** Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection (17) of this section.

**(20) How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed?** Approval of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

**(21) What topics must be included as continuing education courses?** Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) **General.** Ethics in the mortgage industry.

The responsibilities and liabilities of the profession.

Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.  
 Home Ownership Protection Act.  
 Bank Secrecy Act.  
 Appraisal regulations.  
 Underwriting.  
 Any subsequent act or regulation applying to mortgage brokers.

**(e) Mortgage services and products.**

Conventional.  
 Reverse mortgages.  
 FHA mortgages.  
 VA mortgages.  
 Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

**(22) May the department audit or review a course of education?** Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.

NEW SECTION

**WAC 208-660-700 Mortgage broker commission.** (1) **What is the role of the mortgage broker commission (commission)?** The commission acts in an advisory capacity to the director on mortgage broker issues. The commission advises the director on the characteristics and needs of the mortgage broker profession.

**(2) Who serves on the commission?**

(a) The director appoints the seven members of the commission for two-year terms. Commission members must have at least five years' experience in the business of residential mortgage lending. The experience must be within the past five years from the date of appointment. When appointing a commission member, the director will consider the recommendations from professional organizations that represent mortgage brokers and loan originators.

(b) Of the seven voting members of the commission, at least three members of the commission must be licensed mortgage brokers, at least two must be licensed loan originators who are not designated brokers, and at least one must be a mortgage broker who is exempt from licensure under RCW 19.146.020(1).

(c) The director or a designee serves as an ex officio, nonvoting member of the commission.

**(3) How do interested parties apply for a position on the commission?** In November of each year the department sends a notification to all mortgage brokers to advise them that the director is accepting applications for appointment to the commission. The director will accept applications in the form of a cover letter and resume until December 15th. The director will select the number of applicants needed to fill the vacancies by January 31st so the appointee(s) can attend the February meeting of the commission.

**(4) What are some of the actions the commission may take?** The commission may:

(a) Adopt and meet according to a regular schedule;

(b) Attend special meetings if called by the chairperson;  
 (c) Hear testimony, and advise the director on proposed changes to the act; and  
 (d) Advise the director on the licensing of mortgage brokers and loan originators.

NEW SECTION

**WAC 208-660-800 Forms.** Reserved.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-660-010	Definitions.
WAC 208-660-020	Statutory exemptions.
WAC 208-660-025	Computer loan information services and systems.
WAC 208-660-030	Application procedure for mortgage broker license.
WAC 208-660-035	Interim licenses.
WAC 208-660-040	Experience requirements.
WAC 208-660-042	Continuing education requirement.
WAC 208-660-045	Approval of courses and examinations.
WAC 208-660-050	Demand for criminal history information.
WAC 208-660-060	Department's fees and assessments.
WAC 208-660-061	Fee increase.
WAC 208-660-062	Waiver of fees.
WAC 208-660-070	Branch office application procedure.
WAC 208-660-080	Surety bond and approved alternatives—General requirements.
WAC 208-660-08005	Alternatives to the surety bond.
WAC 208-660-08010	Establishment of trust account for borrower funds to pay third-party providers.
WAC 208-660-08015	Designation of trust account(s).
WAC 208-660-08020	Required trust account records and procedures.
WAC 208-660-08025	Trust account deposit requirements.
WAC 208-660-08030	Trust account disbursement requirements.

WAC 208-660-08032	Approved methods of disbursement to and from trust accounts.
WAC 208-660-08035	Computerized accounting system requirements.
WAC 208-660-08040	Automated check writing systems.
WAC 208-660-085	Alternatives to the surety bond.
WAC 208-660-090	License standards for applicants licensed in other jurisdictions.
WAC 208-660-09005	Registered agent and agent's office.
WAC 208-660-09010	Change of registered agent or agent's office.
WAC 208-660-09015	Resignation of registered agent.
WAC 208-660-09020	Service on licensee.
WAC 208-660-100	License standards for associations.
WAC 208-660-110	Transfers by, or changes in principal or designated broker of, a licensee.
WAC 208-660-120	Employees and independent contractors of licensees.
WAC 208-660-125	Recordkeeping and other requirements for advertising materials.
WAC 208-660-130	Disclosure required to borrower.
WAC 208-660-140	General recordkeeping requirements.
WAC 208-660-145	Forwarding appraisal, title report and credit report.
WAC 208-660-150	Disclosure of significant developments.
WAC 208-660-160	License application denial or condition; license suspension or revocation.
WAC 208-660-165	Fines and penalties for violation of the Mortgage Broker Practices Act.
WAC 208-660-170	Transitional rule.
WAC 208-660-190	Prohibited practices—Improperly influencing appraisals.
WAC 208-660-200	Mortgage broker fees allowed.

WAC 208-660-210

Mortgage brokerage commission.

**WSR 06-23-156****PERMANENT RULES****GAMBLING COMMISSION**

[Order 464—Filed November 22, 2006, 9:00 a.m., effective January 1, 2007]

Effective Date of Rule: January 1, 2007.

Purpose: Gambling service suppliers: Clarifies which type of financiers need to be licensed and which do not; requires businesses that analyze gambling equipment [to] be licensed; and requires businesses that enter into ongoing financial relationships with manufacturers to provide "gambling related software" to be licensed. "Gambling related software" affects the results/outcome of games or directly interfaces with, or controls, the operation of the gambling equipment.

Citation of Existing Rules Affected by this Order: Amending WAC 230-02-205.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-17-084 on August 14, 2006, with a published date of September 6, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 1, Repealed 0.

Date Adopted: November 21, 2006.

Susan Arland  
Rules Coordinator

**NEW SECTION**

**WAC 230-02-203 Lending agent, loan servicer, and placement agent defined.** A person or entity, other than a regulated lending institution, that finds, places, administers, facilitates, or services loans to licensees and whose services include, but are not limited to, one or more of the following:

- (1) Charging an ongoing fee for their services;
- (2) Maintaining rights as the lender;
- (3) Determining when the loan is in default; or
- (4) Maintaining access to collateral.

**NEW SECTION****WAC 230-02-204 Regulated lending institution defined.**

A regulated lending institution is any state or federally regulated organization primarily in the business of lending money. An organization must demonstrate that it is a regulated lending institution by meeting all of the following criteria:

(1) Is registered and actively regulated by the Securities and Exchange Commission or any United States federal or state governmental banking or financial regulatory agency. Lending institutions must demonstrate to the commission that they are actively regulated by at least:

(a) Annually reporting information on their lending activities to the regulatory agency; and

(b) Receiving regular audits or inspections by the regulatory agency.

(2) Is acting as a passive investor in the licensee to which they are lending money. For the purposes of this rule, passive investors are those who do not have actual or potential influence over the operations of the licensed entity. A lending institution will not be considered a passive investor if they:

(a) Appoint or have the right to appoint officers, directors, consultants, or other positions with the licensee; or

(b) Require the licensed establishment to seek their approval or authorization in making business decisions for the organization; or

(c) Have full access to records of the establishment; or

(d) Have the ability to convert the debt into shares which would result in the lender becoming a substantial interest holder in the licensee per WAC 230-02-300(4).

(3) A majority of its outstanding loans receivable are from businesses not engaged in gambling activities.

**AMENDATORY SECTION** (Amending Order 456, filed 3/14/06, effective 7/1/06)**WAC 230-02-205 Gambling service supplier defined.**

A "gambling service supplier" is any person who provides gambling related services for compensation, whether directly or indirectly.

(1) Gambling related services include at least the following:

(a) Providing consulting or advisory services regarding gambling activities;

(b) Providing gambling related management services;

(c) Providing financing for purchases or leases of gambling equipment or for providing financing for infrastructure or facilities, or equipment that supports gambling operations for more than one licensee. For purposes of this section, financing by any bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution shall not be deemed as providing gambling related services;

(d) Acting as a lending agent, or loan servicer, or placement agent as defined in WAC 230-02-203;

(e) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission;

((e))) (f) Providing assembly of components for gambling equipment under a contract with a licensed manufac-

turer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer;

((f))) (g) Providing installation, integration, maintenance, or any other service of digital surveillance systems that allows direct access to the operating system; ((or

((g))) (h) Training individuals to conduct authorized gambling activities; or

(i) Performing the testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compact.

(2) The term "gambling services supplier" does not include the following:

(a) Universities and colleges that are regulated by the Washington state board of community and technical colleges and the higher education coordinating board which train individuals to conduct authorized gambling activities;

(b) Licensed manufacturers or distributors who service and repair pull-tab dispensing devices, bingo equipment or any other authorized gambling equipment;

(c) Attorneys, accountants, and governmental affairs consultants whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; ((and))

(d) Persons that only provide nonmanagement related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services ((does)) do not exceed twenty-five thousand dollars during any calendar year;

(e) Persons that provide names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; and

(f) Regulated lending institutions as defined in WAC 230-02-204.

**WSR 06-23-158****PERMANENT RULES****WASHINGTON STATE UNIVERSITY**

[Filed November 22, 2006, 9:02 a.m., effective December 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules are being changed to allow authorized Washington State University residence hall, custodial, maintenance, operations, police, fire, and administrative staff and agents to have access to residence halls at all times while performing university duties.

Citation of Existing Rules Affected by this Order: Amending WAC 504-24-020 Social policies and procedures and adding new section WAC 504-24-025 University staff access to residence halls.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 06-18-086 on September 5, 2006.

Changes Other than Editing from Proposed to Adopted Version: We added a clarification, to make sure that any university agent performing his/her duties could access residence halls. The original referenced only employees, and being so restrictive was not our intent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2006.

Ralph T. Jenks, Director  
Procedures Records and Forms  
and University Rules Coordinator

**AMENDATORY SECTION** (Amending Order 87-1, filed 5/26/87)

**WAC 504-24-020 Social policies and procedures.** (1) Security hours.

(a) Living groups are secured during the following hours: 11:00 p.m. - 6:30 a.m. daily.

(b) It is understood that a living group has the prerogative of maintaining additional security hours if decided by a vote of the living group. The living group's current security hours should be on file in the department of residence living.

(2) Guest rules.

(a) Guests must comply with the regulations of the living groups they are visiting.

(b) Keys or card keys will not be issued to guests.

(c) The host or hostess shall be responsible for the action(s) of guests.

(d) All guests must be escorted while in the building.

(e) Except for those persons authorized access by WAC 504-24-025, guests are defined as anyone not residing in the residence hall.

(3) Visitation.

Each living group is permitted to develop its own visitation schedule for its main lounge and lobbies. No visitation on living floors is permitted between hours of 2:00 a.m. and 6:30 a.m.

**NEW SECTION**

**WAC 504-24-025 University staff access to residence halls.** University administrators or designees, officers, agents, or employees whose duties include working with residence hall residents or programs, performing custodial, maintenance, or operations of residence halls, or performing safety, emergency, security, police, or fire protection services shall have access to residence halls at all times while in the performance of their assigned duties.

**WSR 06-23-159**

**PERMANENT RULES**

**WASHINGTON STATE UNIVERSITY**

[Filed November 22, 2006, 9:04 a.m., effective December 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Repeal of chapter 504-25 WAC, Standards of conduct for students and adding new chapter 504-26 WAC, Standards of conduct for students. The rules for standards of conduct for students are being updated and clarified.

Citation of Existing Rules Affected by this Order:  
Repealing chapter 504-25 WAC.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 06-18-087 on September 5, 2006.

Changes Other than Editing from Proposed to Adopted Version: Made terminology in WAC 504-26-220 and 504-26-301 consistent. The terms listed for protected classes should be the same in both.

In WAC 504-26-222, adopted proposed change to add "in his or her regular life activities" and in last phrase used "victim's regular life activities."

In WAC 504-26-301 added word "responsible" regarding a student who violates code provisions. Added victim age and marital status as possible factors when determining sanctions.

In WAC 504-26-403 (4)(b) added word "accused" as a descriptor to more clearly identify student.

In WAC 504-26-405 [(1)](i) removed reference to alcohol and drug policy and changed it to refer to the standards of conduct for students involving alcohol or drugs. Also changed suspension period to one or more semesters from a minimum of one semester.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 46, Amended 0, Repealed 72.

Number of Sections Adopted Using Negotiated Rule Making: New 46, Amended 0, Repealed 72; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2006.

Ralph T. Jenks, Director  
Procedures Records and Forms  
and University Rules Coordinator

**Chapter 504-26 WAC****STANDARDS OF CONDUCT FOR STUDENTS**NEW SECTION

**WAC 504-26-001 Preamble.** Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the community.

NEW SECTION

**WAC 504-26-010 Definitions.** (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appellate board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a student conduct board's determination as to whether a student has violated the standards of conduct for students or from the sanctions imposed by the student conduct officer.

(3) The term "cheating" includes, but is not limited to:

(a) Use of any unauthorized assistance in taking quizzes, tests, or examinations.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition, without permission, of tests or other academic material belonging to a member of the university faculty or staff.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Research misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of research misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of research misconduct is subject to sanctions by the office of student conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the vice-provost for research.

(4) The term "complainant" means any person who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct

classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, or any other person employed by the university. A person's status in a particular situation is determined by the vice-president for student affairs.

(9) The term "organization" means any number of persons who have complied with the formal requirements for university recognition.

(10) The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(11) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(12) The term "shall" is used in the imperative sense.

(13) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(14) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(15) The term "university" means all locations of Washington State University.

(16) The term "university conduct board" means those persons who, collectively, have been authorized by the vice-president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a rules violation has been committed.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice-president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

## **ARTICLE I AUTHORITY FOR STANDARDS OF CONDUCT FOR STUDENTS**

### NEW SECTION

**WAC 504-26-100 Composition of conduct and appellate boards.** (1) The university conduct board shall be composed of five individuals appointed by the vice-president for student affairs: Two students, two faculty members, and a fifth person, who may be any category of university employee and who shall be named by the vice-president for student affairs as the chairperson of the board.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be composed of three university employees appointed by the vice-president for student affairs. Three persons constitute a quorum of the appeals board.

### NEW SECTION

**WAC 504-26-101 Convening boards.** The student conduct officer convenes boards for each conduct matter and for appeals of decisions.

### NEW SECTION

**WAC 504-26-102 Policies.** The vice-president for student affairs or designee shall develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct board hearings that are consistent with provisions of the standards of conduct for students.

### NEW SECTION

**WAC 504-26-103 Decisions.** Decisions made by a student conduct board and/or student conduct officer become final twenty-one days after the date the decision is signed, unless an appeal is filed prior to that date.

## **ARTICLE II PROSCRIBED CONDUCT**

### NEW SECTION

**WAC 504-26-200 Jurisdiction of the university standards of conduct for students.** The university standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after

classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university and/or the pursuit of its objectives.

### NEW SECTION

**WAC 504-26-201 Misconduct—Rules and regulations.** Any individual or organization found to have committed or to have attempted to commit the following misconduct (WAC 504-26-202 through 504-26-226) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

### NEW SECTION

**WAC 504-26-202 Acts of dishonesty.** Acts of dishonesty, include but are not limited to the following:

(1) Cheating, plagiarism, or other forms of academic dishonesty such as:

(a) Unauthorized collaborations on assignments;

(b) Facilitation of dishonesty, including not challenging academic dishonesty;

(c) Obtaining unauthorized knowledge of exam materials;

(d) Unauthorized multiple submission of the same work; and

(e) Sabotage of others' work.

(2) Knowingly furnishing false information to any university official, faculty member, or office.

(3) Forgery, alteration, or misuse of any university document, record, or instrument of identification.

### NEW SECTION

**WAC 504-26-203 Disruption or obstruction.** Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises.

### NEW SECTION

**WAC 504-26-204 Abuse of self or others.** Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including one's self.

### NEW SECTION

**WAC 504-26-205 Theft or damage to property.** Theft of and/or the intentional or reckless damage to the property of another.

NEW SECTION

**WAC 504-26-206 Hazing.** (1) No student or student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include but are not limited to the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be imposed, shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any organization, association, or student living group that knowingly permits hazing by its members or others subject to its direction or control shall be deprived of any official recognition or approval granted by the university.

NEW SECTION

**WAC 504-26-207 Failure to comply with university officials or law enforcement officers.** Failure to comply with directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

NEW SECTION

**WAC 504-26-208 Unauthorized keys or unauthorized entry.** Unauthorized possession, duplication, or use of keys to any university premises or unauthorized entry to or use of university premises.

NEW SECTION

**WAC 504-26-209 Violation of university policy, rule, or regulation.** Violation of any university policy, rule, or regulation published in hard copy or available electronically on the university web site.

NEW SECTION

**WAC 504-26-210 Violation of law.** Violation of any federal, state, or local law.

NEW SECTION

**WAC 504-26-211 Drugs and drug paraphernalia.** Use, possession, manufacture, or distribution of marijuana, narcotics, or other controlled substances, and drug paraphernalia except as permitted by federal, state, and local law.

NEW SECTION

**WAC 504-26-212 Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages (except as expressly permitted by university regulations), or public intoxication are prohibited. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under twenty-one years of age.

NEW SECTION

**WAC 504-26-213 Firearms and dangerous weapons.** No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university property or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. Students wishing to maintain a firearm for hunting or sporting activities must store the firearm with the Washington State University department of public safety.

NEW SECTION

**WAC 504-26-214 Disruptive activity.** Participating in an on-campus or off-campus riot or unlawful assembly that disrupts the normal operations of the university and/or infringes on the rights of other members of the university community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area. For peaceful demonstrations, students should consult with university police for safety guidelines.

NEW SECTION

**WAC 504-26-215 Obstruction.** Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or supervised functions.

NEW SECTION

**WAC 504-26-216 Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace on

university premises or at functions sponsored by, or participated in by, the university or members of the academic community.

#### NEW SECTION

**WAC 504-26-217 Unauthorized use of electronic or other devices.** Unauthorized use of electronic or other devices: Making an audio or video record of any person while on university premises without his or her prior knowledge, or without his or her effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where she or he would reasonably expect privacy and where such images are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view, such as Martin Stadium or the Glenn Terrell Mall.

#### NEW SECTION

**WAC 504-26-218 Computer abuses or theft.** Theft or other abuse of computer facilities and resources, including but not limited to:

- (1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized transfer of a file.
- (3) Use of another individual's identification and/or password.
- (4) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.
- (5) Use of computing facilities and resources to send obscene, harassing, or threatening messages.
- (6) Use of computing facilities and resources to interfere with normal operation of the university computing system.
- (7) Use of computing facilities and resources in violation of copyright laws.
- (8) Any violation of the university computer use policy found at [http://www.wsu.edu/~forms/HTML/EPM/EP4\\_Electronic\\_Publishing\\_Policy.htm](http://www.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Publishing_Policy.htm)

#### NEW SECTION

**WAC 504-26-219 Abuse of the student conduct system.** Abuse of the student conduct system, including but not limited to:

- (1) Failure to obey the notice from a university conduct board or university official to appear for a meeting or hearing as part of the student conduct system.
- (2) Willful falsification, distortion, or misrepresentation of information before a student conduct board.
- (3) Disruption or interference with the orderly conduct of a student conduct board proceeding.
- (4) Filing fraudulent charges or initiating a student conduct code proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of a university conduct board prior to, and/or during the course of, the student conduct board proceeding.

(7) Harassment (verbal or physical) and/or intimidation of a member of a university conduct board prior to, during, and/or after a student conduct code proceeding.

(8) Failure to comply with the sanction(s) imposed under the standards of conduct for students.

(9) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

#### NEW SECTION

**WAC 504-26-220 Discrimination.** Discrimination on the basis of race, color, religion, ancestry, national or ethnic origin, age, gender, marital status, veteran status, sexual orientation, gender identity, or mental, physical, or sensory disability is prohibited in conformity with federal and state laws.

#### NEW SECTION

**WAC 504-26-221 Sexual misconduct.** (1) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.

(2) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity—silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or blackmail is threatened or used to procure compliance with the sexual activity; or

(b) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.

(3) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

#### NEW SECTION

**WAC 504-26-222 Harassment.** Conduct by any means that is severe, pervasive, or persistent, and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermine his or her ability to work, study, or participate in his or her regular life activities or participate in the activities of the university, and actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

NEW SECTION

**WAC 504-26-223 Stalking.** Intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

NEW SECTION

**WAC 504-26-224 Reckless endangerment.** Engaging in conduct that creates an unreasonable risk of harm to another person or property.

NEW SECTION

**WAC 504-26-225 Trespassing.** Knowingly entering or remaining unlawfully in or on university premises or any portion thereof. Any person who has been given written notice by a university official of the university's decision to exclude him or her from all or a portion of university property is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of university property, unless given explicit written permission by university administration.

NEW SECTION

**WAC 504-26-226 Violation of a disciplinary sanction.** Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

### ARTICLE III RULES AND REGULATIONS

NEW SECTION

**WAC 504-26-301 Malicious intent.** If a student is found responsible for violating any provision of this code as a result of causing injury to another or to another's property, or as a result of placing another in reasonable fear of injury to self or property, and if the responsible student is found to have intentionally selected the victim based upon the responsible student's perception of the victim's race, color, religion, ancestry, national or ethnic origin, age, gender, marital status, veteran status, sexual orientation, gender identity, or mental, physical, or sensory disability, such finding is considered an aggravating factor in determining a sanction for such conduct.

NEW SECTION

**WAC 504-26-302 Responsibility for guests.** A student or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

NEW SECTION

**WAC 504-26-303 Students studying abroad.** Students who participate in any university-sponsored or sanctioned

foreign country study program shall observe the following rules and regulations:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; and
- (3) Any other agreements related to the student's study program in a foreign country.

NEW SECTION

**WAC 504-26-304 Group conduct.** Sororities, fraternities, and recognized groups are expected to comply with the standards of conduct for students and with university policies. When a member or members of a student organization violates the standards of conduct for students, the student organization or individual members may be subject to appropriate sanctions authorized by these standards.

NEW SECTION

**WAC 504-26-305 Violation of law and university discipline.** (1) University disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and the standards of conduct for students (that is, if both possible violations result from the same factual situation) without regard to pending civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under these standards may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice-president for student affairs or designee. Determinations made or sanctions imposed under these standards are not subject to change because criminal charges arising out of the same facts giving rise to violation of university rules were dismissed, reduced, or resolved in favor of the criminal law defendant. A student charged with criminal offenses may choose to remain silent during conduct proceedings, recognizing that he or she gives up the opportunity to explain his or her version of events and that the decision is made based on the information presented at the hearing.

(2) When a student is charged by federal, state, or local authorities with a violation of law, the university does not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the standards of conduct for students, the university may advise off-campus authorities of the existence of the standards and of how such matters are typically handled within the university community. The university attempts to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the university community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

## ARTICLE IV

### STUDENT CONDUCT CODE PROCEDURES

#### NEW SECTION

**WAC 504-26-401 Complaints and student conduct process.** (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students. A complaint is prepared in writing and directed to a student conduct officer. Any complaint is to be submitted as soon as possible after the event takes place, preferably within thirty days.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the code of conduct. If a conduct officer determines that a complaint appears to state a violation of the student code of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or as a conduct board hearing.

(a) When the allegation involves a student/university community complainant and the accused disputes the facts and/or denies responsibility, the matter is referred to the university conduct board.

(b) If the possible or recommended sanction is expulsion or suspension, except for suspensions resulting from violations of the alcohol or drug provisions of this code, the matter is referred to the university conduct board.

(c) Matters other than those listed in (a) and (b) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision on the matter is made by the university conduct officer and such decision is not subject to appeal.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act

(FERPA) (20 U.S.C. Sec. 1232g; 34 CFR Part 99), or the accused student consents to such disclosure.

#### NEW SECTION

**WAC 504-26-402 Conduct officer actions.** (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is informed of the bases for those charges and of the time, date, and place of a conference between the student and the conduct officer.

(a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the student or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.

(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.

(c) Any request to continue the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding exonerating the student or students;

(b) Dismiss the case;

(c) Impose verbal warning to the student directly, not subject to the student's right of appeal as provided in this code;

(d) Impose additional sanctions of reprimand, probation, or, for violations of alcohol or drug policies, suspension. Such sanctions are subject to the student's right of appeal as provided in this code; or

(e) Refer the matter to the student conduct board pursuant to WAC 504-26-401(3).

(4) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The student is also notified of his or her right to appeal pursuant to WAC 504-26-407.

#### NEW SECTION

**WAC 504-26-403 Conduct board proceedings.** (1)

Any student charged by a conduct officer with a violation of any provision of standards of conduct for students that is to be heard by a conduct board is provided notice by personal delivery or by regular United States mail addressed to the student or student organization at her, his, or its last known address.

(a) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files.

(b) The student or student organization is responsible for keeping an updated mailing address on file with the registrar.

(2) The written notice shall be completed by the conduct officer and shall include:

- (a) The specific complaint, including the university policy or regulation allegedly violated;
- (b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;
- (c) The time, date, and place of the hearing;
- (d) A list of the witnesses who may be called to testify, to the extent known;
- (e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406. Ordinarily, the hearing occurs within fifteen days of notice.

(b) Requests to continue the hearing date must be addressed to the chair of the university conduct board. Requests made by an accused student must be copied to the office of student conduct; requests made by the office of student conduct must be copied to the accused student. A continuance is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board according to the following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) The complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, advisors are not permitted to speak or to participate directly in any university conduct hearing. An advisor may communicate with the accused and recesses may be allowed for privacy. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the university conduct board hearing because delays are not normally allowed due to the scheduling conflicts of an advisor.

(vi) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The con-

duct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board.

(vii) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair.

(viii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(ix) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the student conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged.

(x) The university conduct board's determination is made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. Additionally, rules of privilege and relevancy apply.

(b) The accused student or student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the conduct code), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered or deposited in the U.S. mail, and a statement of how to file an appeal.

(i) The conduct board's written decision is sent by regular mail or personal delivery, and may also be sent by electronic mail to the accused student's or the president of the student organization's last known address, as set forth in the registrar's files.

(ii) The written decision is the university's initial order.

(iii) If the student or organization does not appeal the conduct board's decision within twenty-one calendar days

from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as a tape recording, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student who has been provided notice of the hearing does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing by providing separate facilities, and/or by permitting participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

#### NEW SECTION

#### **WAC 504-26-404 Procedure for academic integrity violations.**

**violations.** (1) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor assembles the evidence and assigns a grade, or takes other appropriate action, considering the academic nature of the violation.

(2) The instructor shall notify the office of student conduct of the violation.

(3) If the violation is a first offense for the student, the office of student conduct sends a warning letter to the student informing him or her that a conduct file has been created. The office of student conduct takes no additional action unless the violation is serious enough to warrant further action or the student denies the allegation(s) and requests a hearing.

(4) If the student has a prior academic integrity violation, the case is handled according to the normal conduct procedures. Hearing officers for academic integrity matters are teaching faculty trained as university conduct board members. Serious or multiple violations which may result in suspension or expulsion are referred to a university conduct board.

(5) A student wishing to appeal a grade assigned by the instructor must follow academic regulation 104 in the university catalog. To view the catalog, go to the registrar's office web site at: <http://www.registrar.wsu.edu>.

#### NEW SECTION

#### **WAC 504-26-405 Sanctions.** (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to

complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. More than two violations of the standards of conduct for students involving alcohol or drugs may result in a suspension of one or more semesters.

(j) University expulsion. Permanent separation of the student from the university.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this student conduct code, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from university property based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services or administrative approval from a student organization. Services and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(4) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in conduct officer hearings or cases in which the accused student takes responsibility for violations of the standards of conduct for students.

#### NEW SECTION

**WAC 504-26-406 Interim suspension.** In certain circumstances, the vice-president for student affairs, or a designee, may impose a university suspension prior to the university conduct board hearing.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice-president for student affairs or designee may determine to be appropriate.

(4) The vice-president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the student code of conduct), and the policy reasons for the interim suspension. The vice-president of student affairs or designee sends copies of the decision by personal delivery or by U.S. mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to hearing as quickly as feasible, ordinarily within five working days where the accused student has not consented to a longer time frame.

#### NEW SECTION

**WAC 504-26-407 Review of decision.** (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the accused student(s) to an appellate board within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) The accused and the office of student conduct may explain their views of the matter to the appeals board in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original student conduct board hearing.

(3) The university appeals board shall review the record and any briefing filed by the parties and make one of the following determinations:

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision is entered within twenty calendar days from the date of the appeal letter. By the close of the next business day following entry of the order, the decision is provided to the accused student(s) by personal delivery or deposited into the United States mail addressed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available.

(5) The appeals board decision is effective as soon as the order is signed. A petition to delay the date that the order

becomes effective (a "petition for stay") may be directed to the chair of the appeals board within ten days of the date the order was delivered to the student or placed in the U.S. mail. The chair shall have authority to decide whether to grant or deny the request.

## ARTICLE V RECORDS

### NEW SECTION

**WAC 504-26-501 Records.** (1) Disciplinary records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student conduct.

(4) Personally identifiable student information is redacted to protect another student's privacy.

(5) A student may authorize release of his or her own disciplinary record to a third party in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 CFR Part 99) by making a written request to the office of student conduct.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(7) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

## ARTICLE VI

## INTERPRETATION AND REVISION

### NEW SECTION

**WAC 504-26-601 Interpretations.** Any question of interpretation or application of the standards of conduct for students is referred to the vice-president for student affairs or designee for final determination.

### NEW SECTION

**WAC 504-26-602 Periodic review.** The standards of conduct for students are reviewed every three years under the direction of the student conduct officer.

## REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-25-001	Terms of enrollment.
WAC 504-25-002	Washington State University.
WAC 504-25-003	Definition of a student.
WAC 504-25-011	Good standing.
WAC 504-25-013	Responsibility for guests.
WAC 504-25-014	Students studying abroad.
WAC 504-25-015	Academic dishonesty.
WAC 504-25-018	Copyright and intellectual property.
WAC 504-25-020	Discrimination.
WAC 504-25-025	Sexual offenses.
WAC 504-25-030	Physical abuse or threatened physical abuse.
WAC 504-25-035	Hazing is prohibited.
WAC 504-25-040	Harassment.
WAC 504-25-041	Malicious harassment.
WAC 504-25-042	Stalking.
WAC 504-25-043	Abuse of self or others.
WAC 504-25-045	Reckless endangerment.
WAC 504-25-050	Alcohol.
WAC 504-25-051	Effect of alcohol or drugs.
WAC 504-25-055	Drugs and drug paraphernalia.
WAC 504-25-060	Firearms and dangerous weapons.
WAC 504-25-065	Illegal entry and trespassing.
WAC 504-25-070	Theft or damage of property or services.
WAC 504-25-075	Safety equipment.
WAC 504-25-080	Misrepresentation, fraud and falsification of university records.
WAC 504-25-085	Computer abuses.
WAC 504-25-090	Disruption.
WAC 504-25-095	Disturbing the peace.
WAC 504-25-100	Public indecency.
WAC 504-25-105	Interference with university or student programs or activities.

WAC 504-25-110	Violation of university policies.	WAC 504-25-325	Conduct officer and hearing boards.
WAC 504-25-115	Violation of local ordinances, state or federal law.	WAC 504-25-330	Acts of academic dishonesty that violate the conduct regulations and the academic integrity standards.
WAC 504-25-120	Failure to comply with a proper order.		
WAC 504-25-125	Assisting illegal or prohibited conduct.	WAC 504-25-335	Academic integrity procedures.
WAC 504-25-130	Violation of a disciplinary sanction.	WAC 504-25-340	Rights of students charged with violations of the academic integrity standards.
WAC 504-25-135	Failure to cooperate with a university investigation.	WAC 504-25-350	Hearing guidelines.
WAC 504-25-137	Misuse of keys or access cards.	WAC 504-25-355	Sanctions.
WAC 504-25-138	Misuse of identification.	WAC 504-25-360	Appeals.
WAC 504-25-139	Identity theft.	WAC 504-25-365	Finding of no responsibility.
WAC 504-25-140	Other conduct.	WAC 504-25-370	Other interventions.
WAC 504-25-200	Disciplinary action.	WAC 504-25-375	Records.
WAC 504-25-201	Student rights.		
WAC 504-25-202	Emergency interventions and interim action.		
WAC 504-25-203	Parental notification.		
WAC 504-25-205	Types of hearings.		
WAC 504-25-215	University officer, conduct board, and appeal board.		
WAC 504-25-221	Complaint.		
WAC 504-25-222	Preliminary conference.		
WAC 504-25-223	Notice.		
WAC 504-25-224	Service of notice.		
WAC 504-25-226	Administrative hearing.		
WAC 504-25-227	Administrative hearing appeal.		
WAC 504-25-228	Conduct board hearing.		
WAC 504-25-229	Conduct board appeal.		
WAC 504-25-230	Sanctions.		
WAC 504-25-245	Records.		
WAC 504-25-300	Introduction.		
WAC 504-25-305	Overview of academic integrity procedures.		
WAC 504-25-310	Definitions.		
WAC 504-25-315	Academic integrity processes.		
WAC 504-25-320	Reports of academic dishonesty.		

**WSR 06-23-165****PERMANENT RULES****HEALTH CARE AUTHORITY**

(Public Employees Benefits Board)

[Order 06-09—Filed November 22, 2006, 11:09 a.m., effective December 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of amending the existing rules is to allow:

1. Retirees and their dependents that are full-benefit "dual eligible" for Medicare and Medicaid to retain their PEBB eligibility through deferred enrollment.

2. Dependents of retirees who are not full-benefit "dual eligible" to continue enrollment in PEBB health plan coverage while the retiree is in a deferred status.

3. Retirees and their dependents that become eligible for Medicare Part A, Part B, and Part D outside the PEBB open enrollment to make a plan change consistent with their Medicare enrollment period.

Citation of Existing Rules Affected by this Order: Amending WAC 182-08-198, 182-12-205, and 182-12-265.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: RCW 41.05.068.

Adopted under notice filed as WSR 06-19-084 on September 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 22, 2006.

Jason Siems  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

**WAC 182-08-015 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Board" means the public employees' benefits board established under provisions of RCW 41.05.055.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB sponsored medical insurance by a retiree or surviving dependent.

"Dependent" means a person who meets eligibility requirements set forth in WAC 182-12-260.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.

"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.

"Health carrier" has the meaning set forth at RCW 48.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and uniform dental plan.

"Health plan" or "plan" means medical and dental coverage.

"Insurance coverage" means any health plan, life or long-term disability insurance plan administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer and life insurance offered to employees on an optional basis.

"Open enrollment" means a time period designated by the administrator during which enrollees may apply to transfer their enrollment from one health carrier to another, enroll

in medical coverage if the enrollee had previously waived such coverage, or add dependents.

"PEBB plan" or "PEBB benefits" means one or more insurance coverages approved by the public employees' benefits board for eligible enrollees and their dependents.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or surviving dependent who has been designated by the HCA as the individual to whom the HCA and the health carrier will issue all notices, information, requests and premium bills on behalf of enrolled dependents.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB sponsored health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements set forth in WAC 182-12-260.

**AMENDATORY SECTION** (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-08-198 When may an enrollee change health plans?** (1) Enrollees may change health plans during the annual open enrollment. The enrollee must request the health plan change no later than the end of the open enrollment period. The new health plan's coverage will begin the first day of January after open enrollment.

(2) Enrollees may change health plans outside of the annual open enrollment period ((if one of the following events occur, provided the request to change)) under some circumstances. To make a health plan((s is made)) change, the enrollee must send a completed enrollment form (and a completed disenrollment form, if required) to the PEBB program no later than sixty days after the event occurs. The new health plan's coverage will begin the first day of the month after the PEBB program receives the form(s). These are the circumstances:

(a) ((The)) Enrollees may change health plans if they move((s)) and ((the)) their current health plan ((they are enrolled in)) is not available in their new location. If the enrollee ((fails to)) does not select a new health plan ((they)), the PEBB program will ((be)) automatically ((defaulted to)) enroll them in the Uniform Medical Plan or Uniform Dental Plan.

(b) ((The)) Enrollees may change health plans if they move((s)) and a health plan that was not available to them before is available to them in the new location. The enrollee may only choose ((to enroll in the)) a newly available health plan.

(c) Enrollees may change health plans if a court order requires the enrollee to provide coverage for an eligible spouse, same-sex domestic partner, or child and the enrollee adds the dependent to ((the)) their coverage.

(d) ((The enrollee is a)) Seasonal employees ((who is)) whose off-season is during the annual open enrollment period((. In this case the enrollee)) may select a new health plan upon their return to work.

(e) ((The employee retires.)) Employees may change health plans ((at the time that)) when they ((apply for)) enroll in PEBB((sponsored)) retiree coverage.

(f) ((The)) Enrollee((s)) may change health plans when they become entitled to Medicare or enroll in a Medicare Part D plan.

(g) Enrollees may not change their health plan if their physician stops participation with the enrollee's health plan ((and it is determined by)) unless the PEBB appeals manager determines that a continuity of care issue exists. The PEBB appeals manager ((shall)) will use ((the following)) criteria that include but are not limited to the following in determining if a continuity of care issue((s)) exists:

(i) Active cancer treatment((,(i.e., chemotherapy and/or radiation))); or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy((;

(g) It is determined by the PEBB appeals manager that there is a); or

(vi) Language barrier ((issue (e.g., a Vietnamese speaking provider discontinues participation in a plan and no other Vietnamese speaking provider is available within the subscriber's area that is contracting with that plan and/or within the travel range of the subscriber))).

(h) ((The)) Enrollees (reaches) may change health plans if they reach their medical plan's lifetime maximum.

((3) For enrollees making a health plan change during the annual open enrollment, the plan change must be made no later than the last day of the open enrollment period and the plan change is effective the first day of January following the open enrollment.

(4) For enrollees making a health plan change outside of open enrollment, the health plan change must be made no later than sixty days after the triggering event and the plan change is effective the first day of the month following the date the change request is received by the PEBB program.))

#### AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

**WAC 182-12-109 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Board" means the public employees' benefits board established under provisions of RCW 41.05.055.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB sponsored medical coverage by a retiree or surviving dependent.

"Dependent" means a person who meets eligibility requirements set forth in WAC 182-12-260.

"Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage,

or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.

"Health carrier" has the meaning set forth at RCW 43.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and the uniform dental plan.

"Health plan" or "plan" means medical and dental coverages.

"Insurance coverage" means any health plan, life, or long-term disability insurance plan administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer and life insurance offered to employees on an optional basis.

"Open enrollment" means a time period designated by the administrator during which enrollees may apply to transfer their enrollment from one health carrier to another, enroll in medical coverage if the enrollee had previously waived such coverage or add dependents.

"PEBB plan" or "PEBB benefits" means one or more insurance coverages approved by the public employees' benefits board for eligible enrollees and their dependents.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or surviving dependent who has been designated by the HCA as the individual to whom the HCA and the health carrier will issue all notices, information, requests and premium bills on behalf of enrolled dependents.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB sponsored health plan by an employee (as set forth in WAC 182-12-115) or a dependent who meets eligibility requirements set forth in WAC 182-12-260.

#### AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-12-205 Retirees may defer enrollment in PEBB health plan coverage at or ((following)) after retirement. Except as stated in subsection (1)(c) of this section, if a retiree defers enrollment in PEBB health plan coverage, PEBB also waives coverage for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other coverage.**

(1) ((Beginning January 1, 2001,)) Retirees may defer enrollment in PEBB health plan coverage at or ((following)) after retirement if ((they are)) continuously ((covered under)) enrolled in other medical coverage as stated below:

(a) Beginning January 1, 2001, retirees may defer their PEBB health plan coverage if enrolled in comprehensive employer-sponsored medical coverage as an employee or ((as)) the spouse or same-sex domestic partner of an employee((, or)).

(b) Beginning January 1, 2001, retirees may defer their PEBB health plan coverage if enrolled in medical coverage as a retiree or ((as)) the spouse or ((as the)) same-sex domes-

tic partner of a retiree((~~s retirement insurance from~~) enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer their PEBB health plan coverage if enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB coverage if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) ((If a retiree defers enrollment in PEBB health plan coverage, coverage is automatically waived for all eligible dependents.

(3) Election of retiree term life insurance coverage may not be deferred during periods of other coverage or otherwise.

(4) In order)) To defer health plan coverage, ((a)) the retiree must ((submit the appropriate)) send a completed enrollment form to the PEBB program requesting ((deferral of)) to defer coverage. The ((notice of deferral must be received by)) PEBB ((benefit services prior to the date)) program must receive the form before coverage is deferred or ((within)) no later than sixty days after the date the retiree ((is)) becomes eligible to apply for PEBB ((sponsored)) retiree benefits.

((5))) (3) Retirees who defer PEBB coverage may ((reenroll)) enroll in PEBB coverage ((following the end of a deferral period under conditions listed below)) as follows:

(a) Retirees who defer PEBB health plan coverage while enrolled in employer-sponsored medical coverage((7)) may ((reenroll)) enroll in PEBB health plan coverage by ((submitting the appropriate)) sending a completed enrollment form(((7))) and ((satisfactory evidence)) proof of continuous enrollment in comprehensive employer-sponsored coverage to the PEBB program:

(i) During an annual open enrollment period (PEBB coverage will begin the first day of January after the open enrollment period); or

(ii) No later than sixty days after ((the last day of the)) their employer-sponsored coverage ends. (PEBB coverage will begin the first day of the month after the employer-sponsored coverage ends.)

(b) Retirees who defer PEBB health plan coverage while enrolled as a retiree or dependent of a retiree in a federal retiree plan will have a one-time opportunity to reenroll in PEBB health plan coverage by ((submitting the appropriate)) sending a completed enrollment form(((7))) and ((satisfactory evidence)) proof of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During an annual open enrollment period (PEBB coverage will begin the first day of January after the open enrollment period); or

(ii) No later than sixty days after the ((date their)) federal retiree coverage ends. (PEBB coverage will begin the first day of the month after the federal retiree coverage ends.)

(c) Retirees who defer PEBB health plan ((enrollment will be effective the first day of the month following the date employer sponsored)) coverage ((or coverage under a federal retiree plan ended, except that reenrollment in PEBB insurance)) while enrolled in Medicare Parts A and B and Medicaid may enroll in PEBB health plan coverage by sending a

completed enrollment form and proof of continuous enrollment in creditable coverage to the PEBB program:

(i) During the annual open enrollment period (PEBB coverage will ((become effective)) begin the first day of January ((following)) after the open enrollment period); or

(ii) No later than sixty days after their Medicaid coverage ends (PEBB coverage will begin the first day of the month after the Medicaid coverage ends); or

(iii) No later than the end of the calendar year during which their Medicaid coverage ends if the retiree was also determined eligible under 42 USC §1395w-114 and subsequently enrolled in a Medicare Part D plan. (PEBB coverage will begin the first day of January following the end of the calendar year during which the Medicaid coverage ends.)

#### AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-12-265 What options for continuing health plan coverage are available to widows, widowers and dependent children if the employee or retiree dies?** The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees' benefits board (PEBB) retiree coverage as a surviving dependent. An eligible surviving dependent must enroll in or defer PEBB health plan coverage no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents that lose eligibility due to the death of an eligible employee may continue health plan coverage under a retiree plan provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified same sex domestic partner may continue coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(c) If a surviving dependent of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems((7))) the dependent is not eligible to participate in PEBB retiree coverage. However, the dependent may continue health plan coverage under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents that lose eligibility due to the death of a PEBB eligible retiree may continue health plan coverage under a retiree plan.

(a) The retiree's spouse or qualified same sex domestic partner may continue coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(c) Dependents that are waiving PEBB health plan coverage at the time of the retiree's death are eligible to enroll or defer PEBB retiree coverage. A form to enroll or defer PEBB health plan coverage must be hand-delivered or mailed to the PEBB ((benefit services)) program no later than sixty days after the retiree's death. To enroll in PEBB health plan coverage, the dependent must provide satisfactory evidence that enrollment in other health plan coverage was continuous from the most recent open enrollment period for which PEBB coverage was waived.

(3) Surviving spouses or eligible dependent children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in PEBB sponsored health plan coverage provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified same-sex domestic partner may continue health plan coverage until death.

(b) Other dependents may continue coverage until they lose eligibility under PEBB rules.

(4) ((Application for)) Surviving dependents must notify the PEBB program of their decision to enroll or defer PEBB health plan coverage ((must be made in writing on an election form approved by PEBB)) no later than sixty days after the date of death of the employee or retiree. ((Coverage is retro-active)) If PEBB coverage ended due to the ((date)) death of the employee or retiree ((insuree)), PEBB will reinstate health plan coverage ((terminated)) without a gap subject to ((the)) payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in PEBB health plan coverage ((for each full calendar month in which they maintain coverage)) under ((other employer sponsored comprehensive medical coverage)) WAC 182-12-200 and 182-12-205. ((Notice)) To notify the PEBB program of their intent to enroll or defer PEBB health plan coverage the surviving dependent must ((be sent in writing)) send a completed enrollment form to the PEBB ((benefit services)) program no later than sixty days after the date of death of the ((subscriber)) employee or retiree.

((5)) Surviving dependents that defer coverage while enrolled in an employer sponsored comprehensive medical plan must submit an application to reenroll in PEBB coverage no later than sixty days after the last day of coverage under the employer sponsored medical plan. Satisfactory evidence of continuous enrollment in an employer sponsored comprehensive medical coverage will be required by the PEBB program prior to reenrollment in a PEBB health plan.)